

Daniela Wenzel da Costa

**THE UNITED STATES' IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)  
AGENCY AND THE DEHUMANIZATION OF LATIN AMERICAN IMMIGRANTS**

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Advisor: Prof. MSc. Mariana Dalalana Corbellini

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They say home is where the heart is, and half of mine is not here anymore.

*To my eternal Arno, Natália and Ivoni.*

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‘¿Quién quiere ser latinoamericano?’

Depende de dónde haya que ejercer esta tarea.’

(CANCLINI, 2002, p. 23).

## ABSTRACT

This essay aims to present the treatment given to Latin American immigrants detained in the United States (US/USA) Immigration and Customs Enforcement Agency's detention centers, during the presidential mandates of Barack Obama and Donald Trump, to answer the question of how this treatment has dehumanized detained immigrants. It has as objectives to identify the main principles of the human rights protection systems; to describe the concept of dehumanization; to present USA national migration policies, and to describe how those are represented in ICE's mission and operations; to analyze the International Human Rights' protection systems, and how they are embodied in US internal migration treatment by telling stories from actors involved in it. To do so, a theoretical review is presented based on the International Regimes - specifically the human rights regime - and the Decolonialism theory, together with concepts such as dehumanization and intersectionality. The concepts from these theories are necessary to understand them and are explained throughout the essay, as well as the conception of Latin America as a region and identity. US migration policies are also displayed in a chronological order, with temporal clippings for the analyzed administrations, in order to introduce the argumentation, being followed by reports and stories from different actors involved in the legal process started by immigrants when entering the United States. As a result, it can be said that the treatment given to Latin American immigrants by the institution analyzed in the temporal clipping was poor and inhumane, not providing detainees with materials to supply basic necessities nor the means necessary for them to have a due legal process when immigrating and/or when being arrested.

**Keywords:** Immigration. Latin America. Human Rights. Dehumanization. Immigration and Customs Enforcement.

## RESUMO

O presente trabalho almeja apresentar o tratamento dado a imigrantes latino-americanos detidos pela Agência de Imigração e Alfândega dos Estados Unidos da América (EUA) em seus centros de detenção durante os mandatos presidenciais de Barack Obama e Donald Trump a fim de responder ao questionamento de como este tratamento desumanizou os imigrantes detidos nestes centros. E tem como objetivos identificar e revisar os princípios centrais dos sistemas de proteção de direitos humanos; descrever o conceito de desumanização; apresentar as políticas migratórias nacionais dos EUA, e descrever como estas são representadas nas missões e operações da Agência de Imigração e Alfândega do país; analisar os sistemas de proteção internacional dos direitos humanos, e como eles são incorporados no tratamento migratório interno dos EUA através de relatos de atores envolvidos neste. Para realizá-los, uma revisão é apresentada com base nas teorias de Regimes Internacionais - especificamente, o Regime dos Direitos Humanos - e do Decolonialismo, juntamente com conceitos como “desumanização” e “interseccionalidade”. Os conceitos dessas teorias são necessários para entendê-las e são explicados ao longo do trabalho, assim como a conceituação da América Latina como região e identidade. As políticas migratórias dos EUA são dispostas em ordem cronológica, com recorte temporal para os governos analisados, de forma a introduzir a argumentação, que é seguida por relatos e histórias de diferentes atores envolvidos no processo legal iniciado por imigrantes ao entrarem nos Estados Unidos. Como resultado, o tratamento dado a imigrantes latino-americanos pela instituição analisada, no recorte temporal definido, pode ser avaliado como pobre e desumano, não provendo materiais de necessidade básica aos detentos, ou os meios necessários para que eles tivessem acesso ao devido processo legal quando imigrando e/ou sendo presos.

**Palavras-chave:** Imigração. América Latina. Direitos Humanos. Desumanização. Agência de Imigração e Alfândega.

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## ABBREVIATIONS LIST

DACA	Deferred Action for Childhood Arrivals
DAPA	Deferred Action for Parents of Americans
DHS	Department of Homeland Security
ECLAC	Economic Commission for Latin America and the Caribbean
ERO	Enforcement and Removal Operations
FAIR	Federation for American Immigration Reform
FBI	Federal Bureau of Investigation
FY	Fiscal Year
GAO	Government Accounting Office
HSI	Homeland Security Investigations
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICE	Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
INS	Immigration and Naturalization Service
IOM	International Organization for Migration
LIFE	Legal Immigration Family Equity Act
M&A	Management and Administration
NDS	National Detention Standards
NGOs	Non-Governmental Organizations
OAS	Organization of American States
OPLA	Office of the Principal Legal Advisor
PBNDS	Performance-Based National Detention Standards
SMRs	Standard of Minimum Rules for the Treatment of Prisoners
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
US/USA	United States of America
WHO	World Health Organization

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## 1 INTRODUCTION

The development of Latin America has always been connected to North America, with the first one being dependent on the second not only commercially, but also politically. This dependence has led to a long and cultural migratory movement, which constitutes, today, a large ethnic community within the United States of America (US/USA). Therefore, US internal migratory issues are inherently connected to the Latin American community living in the country, which has seen itself more excluded and threatened as anti-immigration protests have increased not only in the US but in several countries in the last decade.

In the United States of America, the decade of 2010 was also marked by a big turn in government and, consequently, in its laws and international participation. These changes were noticed especially in migratory policies, with Donald Trump and his polemic speeches towards immigrants and their rights. However, migratory issues are not exclusive to Trump's government: stories describing different types of abuse and violence by the US police have become recurrent in international newspapers in the last two decades - encompassing both Obama's administrations - and have exposed numerous problems in the country's legal system. Within these problems, accusations against the Immigration and Customs Enforcement (ICE) agency have received special attention inside the US, and later, internationally. Mentioned in many movies, TV shows and social media trends, the Agency has become a known topic in international media and campaigns such as '#AbolishICE'. As former inmates started to share their stories, more and more complaints have emerged and ICE's popularity has become almost null between Americans, especially in Latin American communities.

The media coverage of police abuse, lack of rightful legal process, family separations and conflicts on the Mexican border have become more and more relevant to public opinion, occupying spaces in international and social media. Consequently, international mechanisms responsible for immigrants' rights have also gained relevance and public attention in the last couple of decades, having its failures and successes exposed. From that, the concept of humanity itself and how it relates to detained immigrants has also been brought to discussions on migration policies, questioning how the treatment given to immigrants dehumanizes them, neglecting legal protection and basic human treatment.

## **1.1 Research question**

How does the treatment given by the Immigration and Customs Enforcement towards its prisoners dehumanized Latin American immigrants while detainees of the agency during the Obama's and Trump's administrations?

## **1.2 Objectives**

### **1.2.1 General objective**

This essay aims to evaluate in which ways Latin American immigrants confined in detention centers of the Immigration and Customs Enforcement were dehumanized by the treatment given by the agency during the Obama's and Trump's administrations.

### **1.2.2 Specific objectives**

Having in sight the project's general objective, it is expected to:

- a) Identify and review the main principles and concepts of the human rights protection systems documents (such as letters, treaties, etc.), with special attention to those related to imprisoned individuals;
- b) Describe the concept of dehumanization and identify how the process of it happens within legal systems;
- c) Present, historically, the USA national migration policies, with specific clipping for Obama's and Trump's administrations;
- d) Describe how US national migration policies are represented in ICE's mission and how the agency implements those policies in their operations;
- e) Analyze the International Human Rights' protection systems within their structures and how they are embodied in US internal migration policies and treatment;
- f) Tell stories from actors involved in the detention process of the Immigration and Customs Enforcement agency regarding the treatment it provides in relation with hygiene, health, and rightful legal process.

### 1.3 Justification

Given the relevance brought to Human Rights by immigration waves that occurred in the XXI century, the lack of public knowledge and attention to this topic is troubling, especially in the current international conjecture. According to Ferreira, Koerner and Maciel (2013), as literature on human rights protection systems has started to focus on complaints made to the Inter-American Court of Human Rights (IACtHR) against Latin American states, those against the United States have been neglected even though they have increased in the last decades: from four in 1980, to sixteen in 1990 and thirty-four in the 2000s. Together with the resurgence of conservative anti-immigration and anti-human rights movements, this lack of knowledge becomes dangerous once it embraces these movements as one of its sources of information, and entails the dissemination of false and/or distorted information about immigrants' human rights. In this context, academic writing based on reliable sources and facts becomes crucial to oppose different forms of violence against foreign communities living outside their original nations.

Furthermore, the anti-immigration idea also becomes dangerous when entering legal systems within states. Data analyzed by the Vera Institute of Justice (BERBERICH; CHEN; TUCKER, 2018) shows that more immigrants were deported from the US between 2000 and 2015 than the total of deported in the previous 150 years. And according to penitentiary records reviewed by the Human Rights Watch in 2019, just in 2016 and 2017, 570 immigrants were detained by local police agencies and submitted to ICE's custody during the progress of their legal processes - regardless of these processes' stages.

From the 1980s until the mid-2010s, the US Department of State had not answered to 21% of requests and measures recommended by the Inter-American Commission on Human Rights (IACHR) until then; and had replied submissively to all others (FERREIRA; KOERNER; MACIEL, 2013), which demonstrates the United States power towards international mechanisms of human rights, and the weak enforcement of this regime on the US legal system.

Having that in sight, and considering that public opinion molds policies and governments, this essay aspires to build greater awareness about the subject and expose how the humanity of Latin American immigrants is not only a 'Trump' issue, but a deeper and more complex problem within the US legal system. Beyond that and the mainstream, the

study aims to elucidate the process of dehumanization of immigrants under the scope of postcolonial studies, adding to the Latin American academic participation within social phenomena analysis - which is still little significant, given that International Relations development as an academic discipline happens belatedly in Latin America when compared to other regions such as Western Europe and North America.

#### **1.4 Methodology**

The following section will discourse on methodological concepts that were used in this research to demonstrate the methodology chosen by the author, explaining the methods and their relation to the subject. First, the research logical base will be exposed, and next the research methods will be presented. Later, the research characteristics will also be indicated, as well as its data sources.

The present essay had as its means the phenomenological method - commonly used in political science research to understand experiences from the subject's perspective, not considering the reality as something objective, but as something that must be understood and comprehended. In this method, the research's techniques are usually qualitative, in order to build an interpretative study, not limited to explanations or analytics (GIL, 2008). For Husserl (1973 apud COELHO, 2021), the positivist certainties are 'too naive' to support scientific research without pre-established judgments, while the phenomenological method assumes the current and lived experience to analyze social phenomena.

The methods applied to this research were the empirical analysis (that follows the empirical logic by differentiating the elements of an event and reviewing each one separately) and the historical (which serves to relate one event to the knowledge of its steps, in chronological order), both could be applied because the present research was limited to a historical period and to an event formed by individual and separate episodes that together shape a pattern (TARTUCE, 2006 apud TUMELERO, 2017). And the research itself can be described as qualitative since it surpassed quantitative data and analyzed subjective elements such as interviews, documents and social behavior; in that sense, it was concerned with aspects from reality that cannot be expressed with numbers, focusing on a dynamic comprehension of social relations (GERHARDT; SILVEIRA, 2009). Furthermore, at first, the study was descriptive, with the connection between the variables being analyzed based on

their descriptions; afterward, the study became explicative, with the identification of facts that contribute to the (re)occurrence of the analyzed events (GIL, 2008).

The bibliographic research was done through written biography (books, articles, dissertations, databases and congress annals) to support the essay development by building the theoretical base from which facts were investigated, and by giving historical information and descriptions needed to interpret the social phenomena that was analyzed, such as the concepts regarding Latin America, immigrants, detainees and dehumanization.

Moreover, documentary research was done through ICE's databases regarding the institution's budget, ongoing processes, deaths and illness' reports to better understand the organization's arrest and detention process; together with databases from the US government containing historic information on migration policies and legal procedures during the mandates of Barack Obama and Donald Trump, so the immigration process in the United States could be comprehended, especially at the time of these governments. This specific time frame starts at the *boom* of deportation records during the Obama administration, with more than three billion people being deported from 2009 to 2016 - 6.5% more than the previous administration (CORRÊA, 2010). Not only that is explained by the harsher migration policies of Obama's government, but also by the heavier migration flows that were intensified after the 2008 world crisis. This intensification and its results, together with the consequences from the global crisis inside of the US, have led to a stricter government regarding migration treatment and the country's international insertion. In that way, Donald Trump's administration was also included in this time frame because of its role in the current situation of Latin American immigrants within the United States. Additionally, both administrations provided a greater number of accessible sources for research, given the bigger academic and journalistic attention to migration policies during their terms.

Furthermore, the documentary research also occurred from non-written documents, such as interviews. With the help from a mediator, a lawyer from an organization that works with detained immigrants was contacted and consulted. The interview was carried with open conversation and descriptions, with no previously built questionnaires nor delimited answers, only with guidance questions as 'APPENDIX A - Interview guidance for workers from legal and social organizations related to prison systems' shows. At the beginning of the interview, specific data was collected so the answers could be better understood: name, gender, professional qualification and time on the job were requested as these may affect how the



work is done and how those assisted by the organization are perceived. The information given through the interview was used only for this research purposes, considering that the sources are humans with their own stories and own experiences, not allowed to be analyzed as quantitative data sources. It is also important to remember that the descriptions given by the interviewed were constructed from a personal perspective, not necessarily reflecting the entire and exact reality of facts. The full interview's transcription can be found as 'APPENDIX E - Interview transcript'.

As only one interview was possible, stories from people involved in ICE's arrest process (such as prisoners and agents) were collected from reports from organizations such as the Human Rights Watch and the International Amnesty (that work in favor of the protection of human rights worldwide), and from newsletters' special editions such as BBC, ProPublica, CNN and others. Both interview and reports collected were considered in order to evaluate the treatment given to detainees under ICE's custody during the administrations of Barack Obama and Donald Trump, with its results being presented as narratives.

Given the distance between the researcher and the analyzed event, and the pandemic context in which most of the thesis was constructed, both bibliographic and documentary research were done almost entirely online through websites, databases and virtual meetings.

## **2 INTERNATIONAL HUMAN RIGHTS REGIME**

With public opinion horrified after the Second World War atrocities, human rights became an international phenomenon. Right after, in 1948, the United Nations General Assembly (UNGA) approved the Universal Declaration of Human Rights (UDHR) from which all individuals are, indistinctly, holders of universal and indivisible rights - civil, political, social, and cultural. This declaration initiated an international normative system, and consequently, the idea that human rights protection can participate in a state's sovereignty and internal legal system. From that, many regional subsystems of human rights protection arise in Europe, America, and Africa; and in 1977, UNGA's resolution 32/127 formally endorsed these continental mechanisms, considering them as complements to regional and global systems, since it allows individuals to use them in their favor based on the principle of equivalence of the most favorable norm - the usual interpretative guidance inside human rights normative systems (OLIVEIRA; ROWEDER, 2010).

In the next sections, the Regime's theory will be reviewed with its classical concepts and structure being analyzed. After, and still under the Regime theory's scope, the human rights international regime will be presented and analyzed historically, followed by the Universal and American declarations on human rights being presented with its main articles (for this research purposes). After, the international protection to prisoners will be historically analyzed, including the Nelson Mandela Rules, which will be linked to the prison population and consequently, immigrant population; leading to the analysis of the international protection to migrants and prisoners, and its main instruments, together with the concepts regarding migration studies. The connection of each of these concepts and subjects to the present research will also be exposed and justified throughout the study.

### **2.1 Regime theory**

When principles and perspectives become doubtful, certain standard behaviors are abandoned and new norms arise. In the mid-1970s and 1980s, the Regime theory emerged to understand the cooperation and conflicts between international actors. In the middle of the

‘neo-neo’ debate<sup>1</sup>, many authors started to question traditional descriptions of the international system - as an anarchical scenario - and its structures when analyzing its consequences and gears (LEMOS *et al.*, 2020). This theory is originally connected to the rise of the new institutionalism and possesses distinct concepts related to classics such as realism, liberalism, and constructivism (HAGGARD; SIMMONS, 1987).

For Stephen Krasner (1983), when a new regime emerges, a new sense of general obligation is embodied in inter-states relations; for him, norms and principles define a regime, consequently changing this one when they themselves are modified. The author describes regimes as,

[...] principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area. They [international regimes] can be defined as sets of implicit or explicit principles. [...] principles are beliefs of fact, causation and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions of actions. Decision making procedures are prevailing practices for making and implementing collective choice (KRASNER, 1983, p. 1-5).

The purpose of regimes would be to facilitate agreements not only temporarily but changing the direction of power and interests (KRASNER, 1983). In the same sense, Keohane and Nye (1977 apud KRASNER, 1983, p. 2) defined regimes as ‘sets of governing arrangements’ that include a ‘network of rules, norms, and procedures that regularizes behavior and control its effects’. Many authors agree regarding regime’s description, but on the other hand, a common agreement on these regime’s purposes and usefulness is harder to be achieved. Although agreeing that international regimes are a set of rules that molds how states cooperate and compete, John Mearsheimer (1994, p. 47-49) analyzed international regimes in a more critical tone in his work ‘The False Promise of International Institutions’,

They [international regimes] prescribe acceptable forms of state behavior and proscribe unacceptable kinds of behavior. These rules are negotiated by states, and [...] are standards of behavior defined in terms of rights and obligations. [...]. Many policymakers as well as academics believe that institutions hold great promise for promoting international peace, however, [...] this optimistic assessment of institutions is not warranted [...]. What is most impressive about institutions, in fact,

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<sup>1</sup> International Relations academic and scientific debate between Neorealists and Neoliberals regarding the new international actors emerging in the post Second World War and during the Cold War scenario. Both theories affirm that the international system is anarchical, but they disagree on what that means. For Neoliberals, states construct and mold the international anarchy, not constraining their options to survive individually or cooperating, since the international system is also normatively regulated, and cooperation in areas of mutual interest through institutions may reduce the effects of international anarchy (BROGA, 2012).

is how little independent effect they seem to have had on state behavior. [...]. The constraints of the [international] system notwithstanding, however, states still have considerable freedom of action, and their policy choices can succeed or fail in protecting [...] national interests and the interests of vulnerable people around the globe. [...] institutions have mattered rather little in the past; they also suggest that the false belief that institutions matter has mattered more and has had pernicious effects. Unfortunately, misplaced reliance on institutional solutions is likely to lead to more failures in the future.

Following the same critical tone, Elisa Bastos (2013) states that the International Regimes theory works mainly with the status quo, excluding marginalized agendas and ignoring the issues of those non-privileged within the system's mode. The author criticizes how regimes tend to find a pattern in international political behavior to explain the past and predict the future in a simplistic way:

[...] it is true that there are more values, order, and conventions than the pure anarchy described by traditional realists. However, the world is not characterized by discipline and authority, but by the absence of government, by the precarity of order and peace, by the weakening of the law, by the great quantity of unsolved problems and conflicts about what, how and by whom it should be done. [...]. If the concern is about order, then it doesn't involve justice nor efficiency, nor legitimacy or any other moral value (BASTOS, 2013, p. 29-31, free translation).

In that sense, Bastos (2013) also questions if regimes aren't actually aimed to maintain the status quo, fearing real changes and its consequences. For her, the political activity may be oriented to achieve more wealth and security for those already rich and secured, instead of allowing more justice and liberty for those oppressed by the international and national systems. This critical tone encounters the later discussion on how international institutions serve not only to guarantee rights and obligations, but also to limit those to certain groups within regional systems.

As Mearsheimer (1994, p. 8) continues, the rules that constitute international regimes 'are typically formalized in international agreements and are usually embodied in organizations with their own personnel and budgets'. Some of these institutions, such as the United Nations (UN) and the Organization of American States (OAS), will be seen next.

## 2.2 Human Rights as an international regime

As mentioned before, World War II changed the way states interact in and perceive the international system. Therefore, many regimes were molded in this spectrum, especially the one regarding human rights protection. To establish a common notion of human rights was challenging and time consuming. However, those involved in the discussion shared a common culture and held common values, living with a level of geographic proximity among each other - many were from Western Europe or North America, and assumed that human rights were a crystalline concept widely agreed (JOHNSON; SYMONIDES, 1998),

[...] it can be noted that the historical development of human rights is frequently associated with the development of the Western world. With its origins in the liberal revolutions from the XVIII century, there was the innovation in recognizing, formally, that men beings are equally endowed with attributes that defined them as human beings. In that sense, the Western logic favors and privileges the written law and its correlated institutional apparatus of promulgation and application as the only efficient way to maintain order in complex systems. That way, even though human rights have in its origin a historical connection to natural rights, from the moment in which norms formally expressed are valued, only the written norm is capable of effectuating guarantees and rights – specifically, the human rights (SILVA, 2012, p. 9, free translation).

According to Brysk (2002, p. 4) ‘the international regime of human rights is a set of universal claims to safeguard human dignity from illegitimate coercion’. These claims are organized in different documents and constitute a group of international commitments largely accepted, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights established under UN’s scope (LEMOS *et al.*, 2020). In these documents, especially the UDHR, the individual’s existence in the international system is recognized for the first time in history (REIS, 2006). According to the United Nations (2021, n. p.),

By becoming parties to international treaties, states assume obligations and duties under international law to respect, to protect and to fulfill human rights. [...]. Through ratification of international human rights treaties, governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. [...]. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual and group complaints are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.

In that sense, many international organizations and mechanisms were built to guide states when there is the need to protect and maintain human rights. These mechanisms are described and work as part of the international regime of human rights, specifically. To Alejandro Anaya Muñoz (2017, p. 173, author's emphasis, free translation) citing the Universal Declaration of Human Rights (1948),

The international regime [...] of human rights is sustained by principles of dignity, equity and equal value of the rights of 'all members of the human family', with no distinction 'by motives of race, sex, language or religion', as well as the inalienability, universality, interdependence and indivisibility of human rights.

Amid the large variety of human rights' treaties and conventions, the academic study around the level of, and the reason for, the participation of states in the international human rights regime leads to a core element: the different ways in which this regime functions for varied states. For Emilie Hafner-Burton (2012, p. 171),

[...] much of what explains participation in, and level of commitment to, international human rights regimes is domestic politics. The strength of the executive and legislative branches of government, local judicial institutions, and civil society all influence government decisions to participate in international human rights regimes; they also influence government decisions on whether to comply with those commitments.

To some governments, the participation in this international regime simply states the commitment to universal values; while for others, it solves historical problems and helps in political transition processes; and some comprehend it as a way to escape public pressure for real changes in policies and behavior, pleasing social organizations and political parties, even if the commitment never reaches solid changes (HAFNER-BURTON, 2012). Because of that, the effectiveness of this regime and its international institutions/treaties/conventions is considered soft law - with few effective mechanisms - and is questioned in its competence. For Rossana Reis (2006), even when a state is condemned, its punishment will be, at top, a political and/or moral embarrassment. Many highlight the fact that human rights have secondary or tertiary character, being administered by states themselves, as the main explanation for the low effectiveness of this regime (REIS, 2006).

On the other hand, authors examine that, even with its limitations, the international regime of human rights was extremely successful in the sense that it has established norms

and a pattern of behavior that allow state's performances to be evaluated and adjudged (REIS, 2006), since treaties influence domestic politics, despite their low power of enforcement - by influencing elite agendas and rearranging a country's priorities, creating a focus for the legislative branch (setting agendas for national lawmaking); and provoking litigation in national courts, consequently creating jurisprudence that favors human rights protection (SIMONS, 2009 apud HAFNER-BURTON, 2012).

With those chain reactions, the perception of human rights gains public recognition and penetrates national legal systems, influencing more states to become signatories of international treaties; and more governments, organizations, and individuals to participate in international courts and international jurisprudence. The legal basis for international human rights is expressed in different forms: general principles, treaties, regional agreements, national laws, international organizations, legislatures, etc. And today, it can be affirmed that every state in the world participates - as signatory and through membership - in the Human Right's legal regime through at least one core UN treaty - the UDHR or the many that originated from it (HAFNER-BURTON, 2012). In that sense, many rights identified in the Universal Declaration created responsibilities on governments, as will be seen next.

### **2.2.1 Universal Declaration of Human Rights**

In December of 1948, UNGA proclaimed the Universal Declaration of Human Rights, affirming a powerful statement: 'All human beings are born free and equal in dignity and rights' and vowing to protect the 'equal and inalienable rights of all members of the human family' by entitling every person 'to all the rights and freedoms set forth in this Declaration, without distinction of any kind' (UNITED NATIONS, 1948, p. 1-2). From that day forward, an extensive network of legal instruments has been created to turn this statement into actions, building a firm international legal regime for the protection of human rights (HAFNER-BURTON, 2012).

The involvement of Non-Governmental Organizations (NGOs) was one of the main innovations brought to institutions by the United Nations system, and thanks to civil pressure - through the submission of drafts and comments to the UN Commission - many significant provisions were included in the declaration, such as the principle of self-determination, of non-discrimination (based on race, sex, language or religion), and of international cooperation

in order to promote human rights and assure fundamental liberty for all through joint and separate actions (JOHNSON; SYMONIDES, 1998). Another crucial principle was the creation of a Human Rights Commission that institutionalized basic individual and collective rights (LEMOS *et al.*, 2020). For Johnson and Symonides (1998, p. 61-62), ‘no other document of any kind, certainly no other statement of human rights, has ever been debated so extensively and intensively [...]’.

From this broad debate, fundamental elements were addressed and determined, and the main ones under this research scope are: article 5 and item 1 of article 25 regarding all individuals, ‘no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’ and ‘everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services [...]’, in this order; article 13 and its items regarding migrants, ‘1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country’ (UNITED NATIONS, 1948, p. 2-7); and from articles 6 to 11 - except 8th - regarding imprisonment,

- 6. Everyone has the right to recognition everywhere as a person before the law;
- 7. All are equal before the law and are entitled without any discrimination to equal protection of the law; [...];
- 9. No one shall be subjected to arbitrary arrest, detention or exile;
- 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him;
- 11.1. Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense; and
- 11.2. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed (UNITED NATIONS, 1948, p. 3-4).

Although the international regime of human rights is recognized by its great extent and accomplishments as seen before, the players involved in its creation are highly criticized. Johnson and Symonides (1998) stress that those were mainly Anglo-American or West Europeans - some with very little legal and activist background - and that the establishment of universal rules was centered in those region’s values. For the authors, the fact that UDHR



writing had unprecedented civil participation did not exclude the fact this participation had nothing to do with the Global East and South.

From that, and considering the need for deeper inspection and regulation of national protection of human rights, regional mechanisms arise to allow a closer and more constant analysis of human rights treatment, such as the European Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the American Convention on Human Rights - the most relevant to this research scope, given the actors involved and analyzed; also, this last regional convention went beyond the Universal declaration and created legal binding to signatory states.

### **2.2.2 American Convention on Human Rights**

International law sets rules that governments must act accordingly regarding certain issues. Within the international human rights frame, national governments have obligations in order to promote and protect these rights to individuals and groups. To ensure that, the Organization of American States was able to create a solid and extensive legal body, including - but not restricted to - civil, cultural, economic, political, and social rights. Additionally, this legal basis also established instruments to ensure and promote these rights internationally and nationally. The document that presents these rights and duties was created in 1969 under the name of 'American Convention on Human Rights' (ORGANIZATION OF AMERICAN STATES, 1969).

Also known as the 'Pact of San Jose, Costa Rica', the Convention aimed to consolidate a regime of personal freedom and social justice in the American continent. In order to achieve that, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights were created; the first one to inspect the enforcement of duties assumed by the Convention's state-parties, and the second one to apply and interpret the Convention's text. These two institutions constitute the current inter-American human rights system (LEMOS *et al.*, 2020).

All members of the OAS are submitted to the system of human rights protection as stated in the article 106 of the OAS Charter (FACHIN; ROBL; TOMIO, 2016) and currently all are signatories of this convention, showing how the idea of human rights is accepted - in theory - in today's American continent. The state's role in human rights protection is to

respect and secure the full exercise of these rights, as stated in the American Convention, by taking all necessary means to do so - including the modification and inclusion of laws (ORGANIZATION OF AMERICAN STATES, 1969). In the words of Oliveira and Roweder (2010, p. 173, free translation), ‘the state obligation towards the Convention is negative in the sense of not violating terms, and positive in the sense of promoting actions to actively guarantee these are obeyed’.

As signatories, the USA and other states are morally required to follow the American Convention guidelines and to ensure its obligations are covered by internal legislative and constitutional processes. The main topics to be internally protected for the means of this essay are: item 1 and 2 of the fifth article that state, in this order, ‘every person has the right to have his physical, mental, and moral integrity respected’ and ‘no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person’; which are strengthened by article number 3, ‘every person has the right to recognition as a person before the law’; item 1 of the article 8<sup>th</sup>, ‘every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal [...] in the substantiation of any accusation [...] made against him or for the determination of his rights and obligations [...]’, which is reinforced by item number 2 that states as follows ‘every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to [...] minimum guarantees’ (ORGANIZATION OF AMERICAN STATES, 1969, p. 1-3). These guarantees are detailed as:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. the right not to be compelled to be a witness against himself or to plead guilty; and
- h. the right to appeal the judgment to a higher court (ORGANIZATION OF AMERICAN STATES, 1969, p. 4).

The regional convention was not meant to be legally binding in its creation in 1969, just to orient OAS member states regarding human rights protection. But, as time went by and the document became stronger with the Inter-American Court and Commission on human rights, its premises evolved into a normative instrument of the American system, containing authoritative catalog on human rights, and being promoted, as a requirement, by all state parties. But on the contrary of what's expected, the USA has not ratified the Convention nationally, not being submitted to its Court and Commissions' decisions and recommendations, legally. According to Joseph Diab (1992, p. 328, author's emphasis),

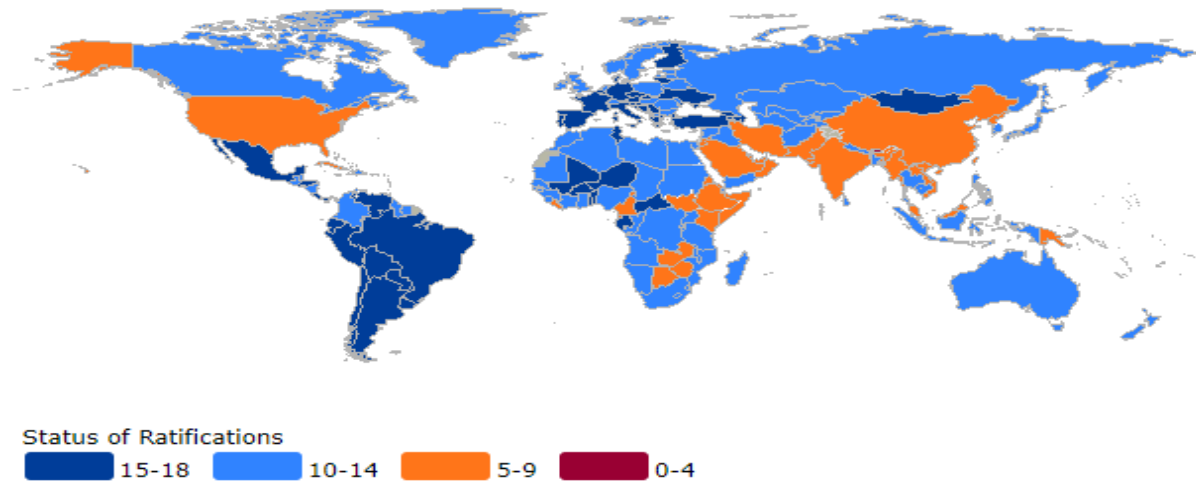
The principal reason for this reluctance [in ratifying the American Convention] is fear of international obligations created by the Convention with the domestic affairs of the United States. [...]. The most common arguments against ratification can be divided into three [...]. The first [...] asserts that ratification by the US would legitimize federal interference in areas that are within the exclusive jurisdiction of the states. The second [...] centers around the idea that human rights are exclusively a domestic issue and therefore beyond the jurisdiction of an international organization. The third [...] consists of objections to the 'right-to-life' provision in Article 4 of the Convention, since this Article raises questions about the legality of the death penalty and abortion.

The United States is the country that has ratified the least human rights treaties from the G20 group<sup>2</sup> (AMERICAN CIVIL LIBERTIES UNION, [c2022a]):

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<sup>2</sup> Multilateral group founded in 1999, with the 20 states that most participate in the world's economy and politics. Nowadays, the group reunites yearly to discuss international trade and development. Its members are, currently: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States, and the European Union. Spain also participates as a permanent guest of the organization (G20, [c2021]).

### Map 1 - States that have most and least ratified the main 18 international human rights treaties<sup>3</sup>



Source: United Nations Office of the High Commissioner of Human Rights, 2014.

Activists for Human Rights have tirelessly engaged with the American Commission of Human Rights for North American institutions to respond to complaints and suggestions, having in mind that the Inter-American Commission of Human Rights is the only international organization that can receive petitions against the United States, being fundamental to stimulate complaints against the country (FERREIRA; KOERNER; MACIEL, 2013). According to Ferreira, Koerner and Maciel (2013), complaints received by the IACHR against the United States regarding human rights protection have been neglected even though

<sup>3</sup> 1. 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'; 2. 'Convention on the Elimination of All Forms of Discrimination Against Women'; 3. 'Convention on the Rights of Persons with Disabilities'; 4. 'Convention on the Rights of the Child'; 5. 'International Convention on the Elimination of All Forms of Racial Discrimination'; 6. 'International Convention for the Protection of All Persons from Enforced Disappearance'; 7. 'International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families'; 8. 'International Covenant on Economic, Social and Cultural Rights'; 9. 'International Covenant on Civil and Political Rights'; 10. 'Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women'; 11. 'Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure'; 12. 'Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict'; 13. 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography'; 14. 'Optional Protocol to the Convention on the Rights of Persons with Disabilities'; 15. 'Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'; 16. 'Optional Protocol to the International Covenant on Economic, Social and Cultural Rights'; 17. 'Optional Protocol to the International Covenant on Civil and Political Rights'; 18. 'Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty' (UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS, 2014).

they have increased in the last decades: from four in 1980, to sixteen in 1990 and thirty-four in the 2000s. By signing but not ratifying the Convention, the USA is not ruled by the Inter-American Court, and does not need to legally obey its decisions. From the 1980s until the mid-2010s, the US Department of State had not answered to 21% of requests and measures recommended by the Inter-American Commission on Human Rights until then; and had replied submissively to all others. Within the complaints, 17.7% were related to foreigners living in the US, and 8% to arrests considered illegal and/or arbitrary (FERREIRA; KOERNER; MACIEL, 2013).

Having that in sight and the fact that the US is the only democracy in the world in which there is no independent authority with the power to monitor the conditions of detention institutions and impose minimum standards of health and safety in them (AMERICAN CIVIL LIBERTIES UNION, [c2022b]), the United States' prison population - proportionately, the largest in the world, with 665 prisoners for every 100,000 people (R7, 2014) - is a preeminent focus inside human rights protection analysis and mechanisms, especially when it is considered that non-citizens (foreign-born) represented almost 15% of the jail population in 2005 – even though they represented only 8.6% of USA total national adult population at the time, according to data from the Department of Homeland Security (DHS) analyzed by Camarota and Vaughan (2009).

Within the prison system's issues, the causes that lead individuals to crime are in the center of discussions. Many studies carried out in different regions of the United States showed no clear correlation between immigrants and levels of crimes (CAMAROTA; VAUGHAN, 2009), leading to the thought that statistics of non-national citizens incarcerated are the result of a progressive criminalization of immigrants and a significant expansion in the policing of these individuals – seen as a national security threat:

To govern immigration through crime is to make crime and punishment the institutional context in which efforts to guide the conduct of immigrants take place. The objective is to shape the comportment of the undocumented in such a way as to incapacitate them and contain the 'threat' they and their actions putatively pose to the security of the nation. The most notable form that this way of governing has assumed over the last twenty years or so is that of intensified law enforcement at the nation's borders. [...] local and state enforcement agencies have progressively become more involved in policing immigration matters; criminal prosecutions of immigration violations have increased; the number of undocumented immigrants incarcerated in country jails, federal prisons, and privately run immigration detention centers have surged [...] (DOWLING; INDA, 2013, p. 2, authors' emphasis).

For Cesare Lombroso (1986 apud MELOSSI, 2015, p. 11), ‘immigrants belong to the human category with the greatest incentives and fewest barriers to committing crime’. Additionally, Matthew Trujillo (2012) analyzes how the stereotypes of immigrants – especially Latinos – as criminals have real consequences, overcoming media channels and reaching the legal scope, leading to high levels of Latin Americans being perceived as guilty while defendants.

Furthermore, Dowling and Inda (2013, p. 7) state that:

It is too simplistic to cast undocumented immigrants as irresponsible lawbreakers just because they are in the US without authorization. One needs to be mindful of why immigrants end up coming to the US illegally.

The authors analyze how the simple fact of immigrating already sets these individuals in a criminal position, when, mostly, they have no other option (given the difficulty in achieving a legit immigration process in situations of political and economic instability – the case of most immigrants in their original countries). Because of that, human rights directed to imprisoned individuals are needed and displayed in separate documents linked to the international human rights regime, such as the UN’s Standard of Minimum Rules for the Treatment of Prisoners (SMRs).

### **2.3 International protection to prisoners**

It is believed that, at any given time in modern human history, more than ten million people were deprived of their liberty (LAFREE *et al.*, 2000).

The term ‘prisoner’ is not limited to its most traditional usage – ‘implying a person confined, after due legal process, to a formal institution of detention, as a result of conviction for a criminal offense, or on remand pending trial’ (POLLARD; RODLEY, 2009, p. 6), but it can, together with the term ‘detained’, refer to any person who is unable to remove his or herself from the ambit in which official acts of abuse may happen (POLLARD; RODLEY, 2009).

The regulation of prison conditions is usually under domestic legislation, being also submitted to local customs, traditions, and standard of life. However, some minimum requirements for human dignity are not susceptible to regional interpretation,

Sometimes a prison regime will be relatively humane, its main purpose and effect being to inflict no more hardship than necessarily attends upon deprivation of liberty and consequent exclusion from participation in society. Sometimes there are schemes which permit a measure of socialization with, and work among, the non-prison community. [...] frequently, however, the prison will be a place of harsh deprivation [...]; its conditions may be generally poor and sometimes an arbitrary or even brutal prison administration will prevail [...]. Sometimes the worst conditions and treatment [...] will be reserved for [...] prisoners (POLLARD; RODLEY, 2009, p. 15).

Realizing that, the international community has set minimum rules for the treatment of prisoners. As seen previously, the international human rights regime is extensive and covers different potential situations in which human dignity may be at risk. To be able to monitor these different situations, from the 1980s the UN started to create Working Groups on specific topics in order to deal with violations against human rights within countries. As these Groups became larger and started to have more power over governments, UNGA was able to pass and adopt varied documents, such as the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Adopted in the end of 1984, this Convention is seen as one of the first steps toward an international protection of prisoners, opening space to the creation of other documents (HUMAN RIGHTS WATCH PRISON PROJECT, [1992?]) such as the Optional Protocol to the Convention Against Torture (2002), the International Convention for the Protection of All Person from Enforced Disappearance (2006), and regional documents against torture and other degrading treatments,

[...] just as it was hardly possible to write a book on the international law of human rights before the advent of the UN over six decades ago, the study of human rights with particular relevance to the treatment of prisoners could only have been written within the last three decades (POLLARD; RODLEY, 2009, p. 5).

From that, international documents arise to state government's legal obligations toward those deprived of liberty. Currently, the most comprehensive guideline on this matter is the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Standard Minimum Rules), adopted by the UN Economic and Social Council in 1957 (HUMAN RIGHTS WATCH PRISON PROJECT, [1992?]).

### 2.3.1 Nelson Mandela Rules

Given the need for norms regarding specific crimes such as torture, or crimes against vulnerable groups, other treaties were created within the universal human rights regime. These treaties do not necessarily impose legal obligations but have social impacts and are used by international bodies to monitor standard and minimum rights, as the case of the UN's Standard of Minimum Rules for the Treatment of Prisoners - also known as the Nelson Mandela Rules. In recent years, the rights of prisoners have become a profound issue in many states, and the emergence of new forms of detention has been a priority in legal discussions. From the human rights perspective, the condition of those incarcerated and the levels of their incarceration treatment are a humanitarian concern (BROWN, 2016).

The SMRs were adopted in 1957, and since then, constitute a universal acknowledgement of minimum standards for the management of prison facilities and the treatment of prisoners:

It should be emphasized that the [...] rules are not intended to describe in detail a model system of penal institutions, they seek only on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management (DRAKULEVSKI, 2017, p. 2).

Reviewed in 2015 under the scope of the United Nations Office on Drugs and Crime (UNODC), the rules were renamed as the Nelson Mandela Rules (in honor of the legacy of Nelson Rolihlahla Mandela, late President of South Africa who spent 27 years in prison amid his activism for global human rights). For the UN General Assembly, the previous standard did not reflect major changes in human rights and criminal justice, and the rules should keep up with the progress of human rights. Nine specific areas were revised and updated in 2015 by an Expert Group: prisoners' inherent dignity as human beings; vulnerable groups; medical and health services; investigation of deaths and torture in custody; restrictions, discipline, and sanctions; access to legal representation; complaints and inspections; terminology and staff training. In total, around 35% of the rules were improved and/or adjusted and almost thirty new rules were adopted in the standard's text (DRAKULEVSKI, 2017).



Within 122 rules, general and specific principles are covered. The first part of the document (rules 1-85) is classified as basic principles and discourses on prisoners' treatment and dignity as human beings, affirming non-discrimination and respect. Elements such as personal hygiene, health care, punishments, complaints and information regarding arrest, legal aid and contact with families are discoursed from rule 86 forward, constituting the second part of the document. For this study purposes, the main rules to be considered are: rule number 1, 'all prisoners shall be treated with the respect due to their inherent dignity and value as human beings'; number 13, 'all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health [...]'; number 15, 'the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner'; item 1 of rule 22, 'every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served'; rule number 42, 'general living conditions addressed in these rules, including those related to [...] sanitation, nutrition, [...] personal hygiene, health care [...] shall apply to all prisoners without exception'; number 68, 'every prisoner shall have the right, and shall be given the ability and means to inform immediately his or her family [...] about his or her imprisonment [...] or transfer to another institution [...]' (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2015, p. 4-20); and all rules related to health-care services, especially item 1 of rule 24,

The provision of health care for prisoners is a state responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2015, p. 8).

The influence of SMRs has been fundamental for the development of prison laws, policies, and practices in UN Member States all over the world, and although the Standard Minimum Rules is not a treaty, it constitutes an authoritative guide to binding treaty standards, implying legal obligation to UN member states (POLLARD; RODLEY, 2009). And despite the fact that the rights of those incarcerated are more present in international discussions and more guidelines related to it are being formulated and followed, the

complexity of including human rights in prison systems still represents a great challenge for many states. For Aleksandra Drakulevski (2017, p. 2),

A large number of prison systems around the world are at a stage of crisis, with serious effects on prisoners, their families and societies as a whole. The ultimate purpose of imprisonment – the protection of society from crime – is undermined in prisons which are overstretched and poorly managed. Many are overcrowded, others are inadequate. [...] this affects the often-forgotten prison population of over 10.3 million people worldwide, as well as those entrusted with their custody.

Throughout history, imprisonment was used constantly to marginalize parts of society - especially the ‘outsiders’ and ‘newcomers’ (MELOSSI, 2015). In the XIX century, Marx (1867 apud MELOSSI, 2015) already identified that legislation treated immigrants as ‘voluntary’ criminals - this automatically remits to the fact that, still on current days, immigrants are seen as individuals who become criminals voluntarily; given that migration itself is classified as a crime in many countries through ‘hard’ immigration laws and procedures.

As a result, in many countries, the prison system is represented mostly by vulnerable groups - poor, black, and immigrants. In the USA, Latin Americans alone represent more than 22% of the incarcerated population (R7, 2014). According to The Sentencing Project (2014 apud R7, 2014, n. p., emphasis added, free translation), ‘*Latinos* are more likely to be at a disadvantage when the courts have to decide whether to incarcerate them or not’. For Melossi (2015), the existence of internal barriers constitutes migration as a crime, treating cases related to it only through the national security perspective and forgetting that real reasons have influenced individuals when deciding to migrate. Consequently, further attention is needed when dealing with migrants’ human rights, especially within legal systems.

## **2.4 International protection to migrants**

According to the Brazilian Institute Museu da Imigração (2019, n. p.), the term ‘to immigrate’ derives from the union of the word *migrare* meaning ‘to change residence or condition’ and the word ‘in’. The term was largely used in history to refer to those who enter a foreign country and stay in it; and it is conceived from the perspective of the country in which the immigrant has entered (MUSEU DA IMIGRAÇÃO, 2019), seeing that individual

as a ‘new’ and ‘different’ element. In the Brazilian Institute Instituto Migrações e Direitos Humanos’ glossary (2014, n. p., free translation), the term ‘immigrant’ is described as the ‘individual who, moving from where they resided, entered another region, city or country other than their nationality, establishing their habitual residence there, permanently or for a relatively long period’. And according to the International Organization for Migration (IOM, [c2021], n. p.),

Migration is one of the defining issues of the twenty-first century. It is now an essential, inevitable and potentially beneficial component of the economic and social life of every country and region. The question is no longer whether to have migration, but rather how to manage migration effectively so as to enhance its positive and reduce its negative impacts.

According to Gil and Pereira (2014, p. 195, free translation),

Migratory processes form people, reconfigure territorial dimensions, create cultures, mold the world. [...]. The characteristics of recent migratory flows are complex because, in a general way, these flows are undocumented and escape official control.

The complexity of migration as a phenomenon and of its causes influences and changes the life of more than 3% of the world's population. Its economic, political, historical, sociological, and legal spheres transcend the national level and enter the international system as a growing concern, with different dichotomies - forced, voluntary, regular, irregular, etc. Given its distinct motives (social, political, economic, geographic, cultural, and historical in both countries of origin and receiving), migration has distinct consequences: cultural exchange, facilitated human mobility, and a variety of social tensions that outweigh border’s issues and infiltrate the legal system in varied scopes (JUBILUT; LOPES, 2017).

Given the international human rights regime’s large coverage and its statute’s generality, it is necessary to form more exact guidelines within the organizations ruled by it. Thereby, international conventions started to incorporate specific sections, according to certain group’s (women, indigenous, children and the focus in this research, immigrants) conditions and needs. The first example of this change is the inclusion of article 15 (the right to have rights), 14 (the right to seek asylum in case of persecution) and the mentioned before, article 13, paragraph 2 (the right to leave their original country and come back when wanted) in the Universal Declaration on Human Rights, pioneer in this ambit (REIS, 2004). On the

other hand, only the existence of these and other letters do not secure rights to all foreign individuals, and the necessity to verify the implementation of this regime in national systems by international institutions arise. In that sense, Alejandro Muñoz (2017, p. 152, free translation) states that,

[...] with greater international acknowledgement of the individual, and with the increase of immigrants around the world, it has become more frequent to utilize it [international organizations] as a parameter to regulate relations between immigrants and their receptor states. [...] the idea that the Declaration on Human Rights was not sufficient to deal with issues originating in the state's relation with foreign individuals was formed.

Treaties regarding human rights intensified the mobility of individuals between states. This happens due to the safety people feel when their rights are secured by international laws. In that sense, the increase of international mechanisms changed International Law and created a new ramification from it: the International Law of Migrations (BICHARA, 2018). As a consequence, migratory movements have multiplied since the beginning of the international human rights regime with the UDHR in 1948 - in 2020, the number of migrants surpassed 281 million worldwide, compared to 221 million in 2010 and 173 million in 2000, representing, currently, 3.6% of the world's total population, 0.5% more than in 2010 and 0.8% more than in 2000 (UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, 2021) - having a huge impact in the receptor country, as well as in the countries of origin. For Gordon Brown (2016, p. 49),

[...] migration has enormous implications for the realization of human rights. While the UDHR applies to all persons irrespective of nationality or citizenship, in reality human rights are often inaccessible or denied to migrants. [...]. It must be recognized that those who move across state boundaries: retain their universal human rights and should be treated accordingly; have continuing rights in relation to their country of origin; have a right to security in transit, including freedom from forced or coerced movement; have a right to a fair and responsible process at borders and in all legal dealings with an actual or potential host country; and have a right to good reasons for a refusal to allow entrance or settlement - refusal should not be based on ethnic, racial, religious or other illegitimate discrimination.

States may adopt internal norms to rule migrant's rights in accordance with international obligations and standards (JUBILUT; MENICUCCI, 2010); but according to Peter Burgess (2012), over the past decade, there has been a growing trend of political pressure to reduce the number of 'unwanted' immigrants (those the countries believe they are

better without). This pressure is largely based on political motivation, not considering nor evaluating the positive results that immigration flows generate.

Because of that, migration has not yet reached a broad and consistent international mechanism to protect foreign individuals – especially one covering the many variables involved in migratory flows - despite its influence in international regimes. What exists so far are international norms that, while guarding elements such as security, nationality, freedom of mobility, human rights, health and asylum, can cover only a part of issues related to migration. This gap in international protection of immigrants is expressed by the lack of specific domestic mechanisms of protection that would allow stability and security to immigrants. For Jubilut and Menicucci (2010, p. 269, free translation),

[...] the situation of irregularity in which many migrants are submitted to does not allow them to exercise their civil, political, social, economic, and cultural rights, because they fear to be found by authorities and be subjected to the consequent application of measures that may result in the return to their original country.

Contemporary liberal authors state that legal oppression and juridical segregation are equated to exclusion from humanity. This idea is based on the argument that violence originated from lawful abandonment not only violates the victim's humanity, but also dehumanizes her or creates the idea that she is less human. The possibility of legally excluding an individual or groups from the right to have rights implies that humanity is something that can be conferred and/or seized (ESMEIR, 2006). In that sense, it is necessary to understand the concept of dehumanization and how it is applied to migrant groups through legal systems, depriving them of their full humanity.

### 3 THEORETICAL APPROACH AND CONCEPTS FOR SUBALTERNS

Kaldor (2003) analyzes how different concepts and theories are used and studied in different regions of the world without communicating with each other. She recognizes that, although the international system and its mechanisms offered some level of personal emancipation to men and women, creating a bigger space for individuals to participate in the international society; this participation is not democratic nor egalitarian, but far from that, being dominated by the Global North. The Postcolonial theory shows that this relation is historically based on power, with different levels of participation for different actors:

Post-colonialism is a conceptual perspective that aims to analyze how determined places and people are constructed as subaltern compared to those who are seen as superior and developed. The approach shows that this construction involves historic relations of power between the ‘first’ and the ‘third-world’, today known as Global North and South. In the beginning, the perspective limited itself to analyzing the consequences of European colonialism. Later, the approach started to consider the US hegemony and the exclusion of minorities as processes connected to a contemporary type of colonialism (RAE, 2011, p. 1, author’s emphasis, free translation).

This chapter will discourse on postcolonial and decolonial studies, with a theory review and an analysis of the current international system based on it, explaining how Latin America is inserted in it and how Latin Americans identify themselves and are identified by others; also, the main geographical and academic concepts encompassing Latin America will be exposed, as well as what it means to be Latin in the United States. This theoretical basis will precede the explanation of the concept of dehumanization and how it is applied to Latin Americans as immigrants, especially when incarcerated. Within this last part, dehumanization will be analyzed with the identification of immigrants, Latin Americans, and prisoners; meeting how they can encounter in the same individual through the introduction of the concept of intersectionality.

#### 3.1 Decolonialism: from Postcolonial theory to a South American perspective

Postcolonialism was fundamental, as a theory, to open the possibility of questioning the mainstream’s assumptions around international relations, doubting if the explanations on how the international systems works actually made sense (BHAMBRA, 2014). The theory

has evolved and today the Latin approach adopted when studying international relations under the perspective of ex metropolises and colonies is named ‘decoloniality’. For Marizete Lucini and Elizabeth Oliveira (2021, p. 2, free translation), ‘decoloniality is a concept that emerged from the necessity of going beyond the idea that colonization was an ended event, since it is understood that this was a process with continuity, even if it has acquired other forms’. The difference between ‘Postcolonial’ and ‘Decolonial’ theories was also geographical in their origin and focus: Postcolonialism emerged from diasporic scholars from the Middle East and the Southern Asia, focusing on those locations from their imperialist’s (Europe and the West) perspectives since the 19<sup>th</sup> and 20<sup>th</sup> centuries; while Decolonialism focused on European discussions - dating from the 15<sup>th</sup> century forward - on lands that would later be the Americas, even though it originated similarly from diasporic scholars - but these from South America (BHAMBRA, 2014). The Decolonial theory goes beyond common sense and penetrates the scientific field when analyzing colonization from the colonized perspective (FREITAS, 2020), taking into account the process of colonization since its beginning, in the 15<sup>th</sup> century, and considering all actors involved in it – even Southern European countries like Spain and Portugal (BHAMBRA, 2014).

Considering that colonized countries were inserted in the international system - already molded under the eurocentrism lenses - as colonies, and that even after their freedom was reached, they still carry the colonization consequences in its international relations, it is necessary to understand these relations from local points of view. For Quijano (2000), the ‘decoloniality of power’ refers to the economic and political control, being fundamental in the structure of the modern world-system that was formed and consolidated together with the colonial system. The decolonial perspective works as a way to understand the international Latin America from the internal Latin America.

Lucini and Oliveira (2021) affirm that international knowledge is also based and constructed on eurocentrism: not admitting other types of knowledge and not including non-white authors in its development. The author's statement leads to the conclusion that ‘universal’ knowledge and concepts are actually formed on euro-centered ideas, inserting the colonized in a scenario that was built without (and not for) them. The violent colonial practices caused, in the long term, the understanding of a world in which there are ‘luminous cities’ with good people, and ‘hungry places’ with badly intentioned people (LUCINI; OLIVEIRA, 2021). Maldonado-Torres (2018 apud FREITAS, 2020, p. 9, free translation)

understands coloniality as ‘a global logic of dehumanization capable of existing even in the absence of formal colonies’.

Lugones (2014) sees this dichotomic hierarchy between human and not human as the central dichotomy of colonial modernity. The author also states that, although colonization in America had different characteristics (economic, cultural, ethnic, etc.) within regions, the modern colonial system generates a common oppression from which all Latin American societies suffer. This dualist vision is reflected in how regions interact with each other, including within the American continent, as it will be seen in the next section.

### **3.2 Latin America: physical and conceptual borders**

Even though Spanish and American writers mentioned the expression before, the term ‘Latin America’ was only diffused during the government of Napoleon III to justify French imperialism in Mexico in the 1860s, by using the linguistic and cultural similarities to argue for a French leadership in the Americas. The concept was then used widely during the First World War, with the rise of the United States as a regional power; from there, the term started to carry a negative connotation, becoming a problematic and violent area, lately developed economically, socially, and culturally (BETHELL, 2010). Because of its cultural and economic distance, the USA and most of Canada have also been seen as the ‘other America’; for Darcy Ribeiro (2014), the Latin Americans and the Anglo Americans contrast as the ‘poor’ and the ‘rich’ America. This contrast reinforces the perspective of Latin Americans as one people, underdeveloped and behind time. Ribeiro (2014) also relates how, especially in Europe and in the USA, the discrimination against Latin Americans is not only guided by the color of skins or traits, but by origins and nationalities. This kind of perspective and treatment has led to a self-hatred, in which Latin Americans do not like Latin America or its people, denying their culture and roots when in other countries.

Historically, it has been difficult to reach common sense around the borders of Latin America. According to Dilma Diniz (2007), if Latin America is defined as the union of South and Central Americas, Mexico is excluded; if defined as all territories below the Bravo river, it is necessary to admit that countries such as Belize, British Guiana and Suriname (that were not colonized by Latin countries) are part of Latin America, even though they do not share the Latin culture; and if culture becomes the conditioning, then territories such as Quebec and



Puerto Rico would necessarily be included. Furthermore, to define Latin America by its languages and cultures, while those are strictly related to colonization, excludes native people from the Latin identity, and does not aim the construction of emancipatory and valorization policies to take Latin people from a subaltern position (BOHOSLAVSKY, 2009).

While Ernesto Bohoslavsky (2009) states that Latin America is a collective identity, being imagined and felt as one unity even if its processes are not homogenous, Néstor Canclini (2002) highlights that it is difficult to portrait Latin Americans as one group, especially if it is considered how different people's experiences in different classes can be inside the same Latin American nation; in accordance, Darcy Ribeiro (2014, p. 4, free translation) states that,

The entire continental expanse is broken into singular nationalities [...] because the different colonial settlements from which Latin American societies were born coexisted without coexisting, over the centuries. Each of them was directly related to the colonial metropolis.

Furthermore, Néstor Canclini (2002) states that it is not simple to discuss an elementary definition for the region since Latin America is not placed only in its territory, but also in its emigrants and their culture that creates mixed societies in non-Latin countries such as the USA and Canada. This has changed the way ethnicities are seen and identified, exceeding territorial borders and the concept of nationality. In the author's words 'the Latin American walks freely, over brims its territory, drifting on scattered routes [...]' (CANCLINI, 2002, p. 20, free translation). Dilma Diniz (2007) concludes that the concept of Latin America is not totally cultural or geographical. Latin American history is partly described and defined by its 'comes' and 'goes' of people.

The historical constitution of race was intensively based on and developed from the colonization of America, making it natural that old habits became legit - such as the mindset that Europeans are superior (LUCINI; OLIVEIRA, 2021). This helps to explain how 'being Latin' is not easily classified, floating between the concepts of race, nationality, and ethnicity. For Ernesto Bohoslavsky (2009, p. 5, free translation), from the 20th century forward, the colonization of Latin America was no longer European, but American,

[...] the end of the Hispanic-Cuban war in 1898 was the last evidence of Spanish colonial presence in America; and simultaneously it constituted the first evidence of North American colonization in America [...].

In that sense, the identification as Latin Americans can only be understood in contrast with the anti-Latin America, the one that is not inclusive and must be reported,

The imagined community of Latin America is one of those who systematically recognizes itself as real and lived [...] inside and outside the continent [...]. In that way, the relevant fact is that we are facing an assumed collective, systematic and voluntary identity, that can't be rationally or logically justified. The reason for this notable strength is that the Latin American belonging rests in its capacity of processing political exclusion. Latin America survives stubbornly as an identity because it represents, transparently, the reality, notwithstanding because it excludes the North Americans – and in a smaller scale, the Europeans – and strongly sets the legitimacy of pan-Americanism (BOHOSLAVSKY, 2009, p. 9, free translation).

For Darcy Ribeiro (2014), during colonization, groups of Latin Americans were involved in a production that did not serve them, but the metropolis. Decades of this process created a culture in which the 'capital' is a goal, the ultimate achievement and the North American way of life is the only possible standard, breaking historic communities and discontinuing any start of local progress. In the words of Andre Frank (2009, p. 9-10),

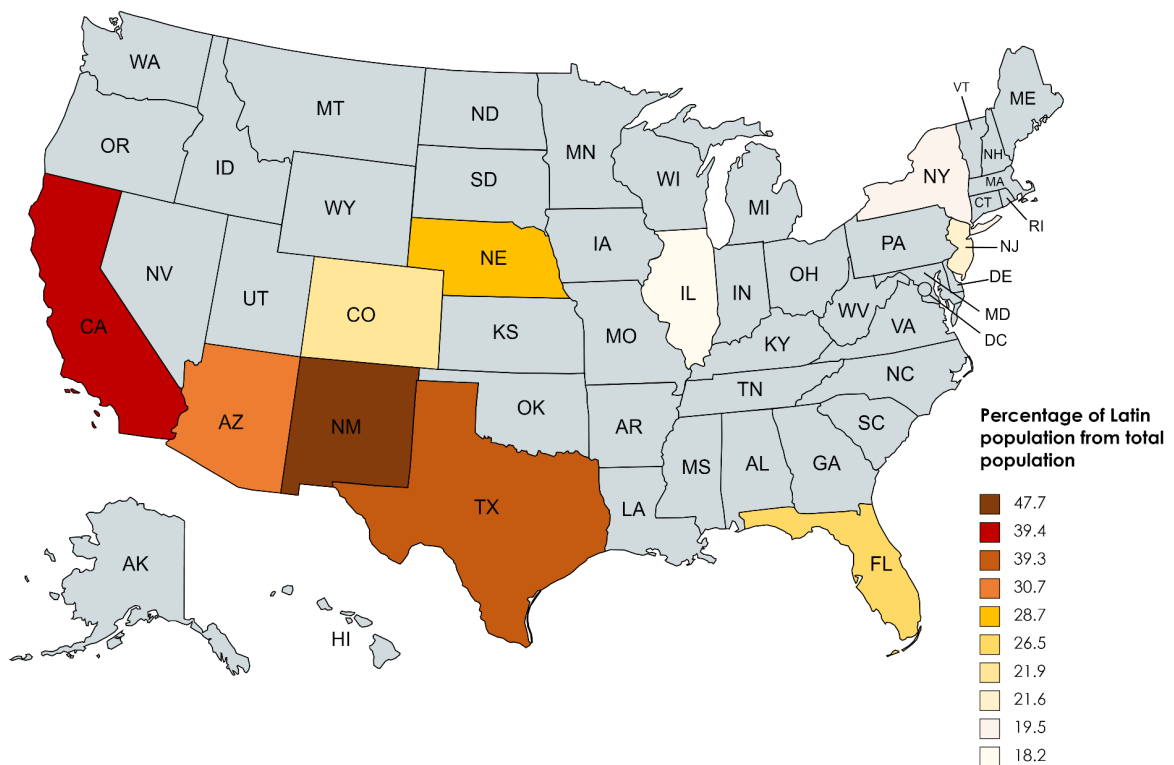
Latin America suffers from a colonial underdevelopment, which makes its people economically, politically, and culturally dependent, not so much on themselves or on each other as on a metropolitan power. [...]. This structure has penetrated all of Latin America, thereby forming and transforming the colonial and class structure of underdevelopment throughout the continent on the national and local levels.

The culture of not investing and not serving itself has led to the impoverishment of Latin America and its population, with a late industrialization and a political structure focused on rich foreigners, and not on local development. This historical process is now reflected on Latin Americans' lives and conditions: data analyzed by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) in 2019 showed that, in 2018, more than 30% of the Latin American population was below the poverty line, while 10.7% was extremely poor - encountering the more than 70% of Latin adult immigrants that alleged financial issues as their motive to migrate (INSTITUTO HUMANITAS UNISINOS, 2018). These numbers do not explain alone the heavy migration flows from Latin America to other countries, but can put a frame on it and help to understand the conditions some immigrants submit themselves in order to move beyond borders.

The violence originating from poverty pushes thousands of families to emigrate and search for better conditions. For Juan Pablo Villalobos (interviewed by Pablo Ferri in 2018),

the level of violence in Latin countries can be compared to those experienced in wars, leading to high levels of emigration. In fifty years (1960-2010), more than eighteen million Latin Americans immigrated to the United States (SÁNCHEZ; TIENDA, 2013), constituting a large Latin community in US territory: until 2015, the total of foreign-born population living in the United States was over forty-one million, and one quarter of all children lived in immigrant families (BRAH; PHOENIX, 2004). The states that border Mexico (the country that exports most immigrants to the United States as it will be seen later) are the ones with the highest percentage of Latin population, as Map 2 shows:

**Map 2 - 10 USA states with bigger Latin population**



Source: United States Census Bureau, 2021.

Due to the distance from their original lands, immigrants and their children (including those born in the receptor country) reinforce their culture by all available means. In that way, the cultural revindication of Latins in the USA occurs through a collective and individual

identity, in which different Latin groups find each other and reinforce their backgrounds at events, religion, language, media, etc. (COCIMANO, 2007).

However, the increasing number of Latin Americans living in the USA has not ended the racism and intolerance that these individuals suffer. Cárdenas (2014 apud R7, 2014) highlights the increasing Latin incarceration: for her, Latin Americans receive harsher punishment than white individuals for the same crimes. And although ICE supposedly targets 'dangerous criminals', most of the immigrants affected by their arrests and methods are people who simply overstayed their visas or missed court after crossing the border illegally, strongly suggesting racial profiling by ICE's agents - who are legally permitted to use race and ethnic appearance for suspicion of criminal or legal status violation (HAYES, 2012). The demographic increase in racist policies, and the lack of political consciousness and unity have created a critical situation within Latin communities: criminality, drugs, alcoholism, hunger, and unemployment are some of the consequences felt by Latins in one of the most powerful nations on the planet (COCIMANO, 2007). According to Gabriel Cocimano (2007), generations of immigrants are caught between the love for the Anglo-Saxon world and the hate for the discrimination, the racism and the dehumanization experienced in it.

### **3.3 Dehumanization and intersectionality: immigrants, prisoners and Latins as one**

Historically, states were conceived based on territorial concepts, such as nationality and security. Consequently, most governments are not able to comprehend the idea of statehood and sovereignty separately from the idea of citizenship and exclusion, making the distinction between those who belong to a territory and those who do not (WEINER, 1993).

From that, it is possible to question the concept of humanity itself and how it is applied to different groups throughout history. According to Fédida (2007 apud TESHAINER, 2011, p. 152), to dehumanize consists in 'to disqualify others through communication, making every different nonexistent as a human, killable, that do not have any humanity. Making it impossible to have any capacity of identification'. This process was repeated historically towards different groups of people: women, black, LGBTs, people with physical/psychological limitations, religious minorities, etc. Regarding that, Patrique Rego (2014, p. 43, author's emphasis, free translation) affirms,

It is possible to realize, throughout human history, a certain ‘dehumanization atmosphere’ in which a determined ‘standard’ precludes some human beings from creating its own humanity; and also, it can be perceived the existence of speeches evidencing the disregard for these beings as ‘humans’.

For Howard and Donnelly (1997 apud ESMEIR, 2006), the relation between international human rights laws and the human itself is not limited to protection, but also reaches exclusion, from which some people are entitled to rights and others may not be. In the words of the Nobel Peace Prized Laureate winner and South African anti-apartheid activist, Desmond Tutu (2010, n. p.),

[...] abominations such as apartheid do not start with an entire population suddenly becoming inhumane. [...]. They start with generalizing unwanted characteristics across an entire segment of a population. They start with trying to solve a problem by asserting a superior force over a population. They start with stripping people of rights and dignity - such as the right to be presumed innocent until proven guilty - that you yourself enjoy. Not because it is right, but because you can. And because somehow, you think this is going to solve a problem.

Furthermore, it can be stated that dehumanization has multiple faces and is constructed and linked to political leaning (MARKOWITZ; SLOVIC, 2021), being associated with ideology and perspective within policies (MARKOWITZ; SLOVIC, 2020). For Pollard and Rodley (2009), when the act of treating one person in a degraded way becomes part of an institutional practice, then the system is dehumanizing the victim, turning him or her into an object. In that sense, Butler (2015) affirms that political actions meant to protect rights and life quality for all, have created a form of domination toward individuals considered destructive and/or not worthy of grief. In that way, Linera, Mignolo and Walsh (2006) agree with Esmeir and add the relations constructed from colonies and metropolis to the discussion, affirming that coloniality also denies humanity to those subalterns, acting towards managing the power relations in the international and national systems.

As a result, the existence of immigrants itself and their nationalities implicates, within human rights mechanisms, the need for specific rights to foreign individuals, given that those may suffer different types of violence from those who live in their original countries. Amanda Warnock (2019) affirms that nationalism, racism, and dehumanization are closely connected, being specially perceived in cross-cultural relations; and that any form of dehumanization excludes immigrants from full social, political, and civic involvement, marginalizing this group. Adding to this argument, Markowitz and Slovic (2021) also state that policies such as

family separation and poor maintenance of detention centers are a way of institutionally dehumanizing immigrants.

A study made by these authors showed that individuals who tend to dehumanize immigrants, stating that they deserve harsher legal punishment, usually saw immigrants as ‘illegal’ aliens, considering only the security that these may threaten; while those that ‘gave’ criminals less jail time and/or gentler punishment analyzed that immigrants entered countries searching for a better life, viewing them as persons with backgrounds and goals (MARKOWITZ; SLOVIC, 2020), encountering the statements of Dowling and Inda (2013), mentioned previously (regarding how people perceive immigration and how it cannot be only governed through crime). Additionally, people who believed that immigrants were less evolved as humans tend to support more social harms in general, such as the right to own guns, immigration raids, and the death penalty (MARKOWITZ; SLOVIC, 2020). This study was made through a random selection of participants, from which most were lay in legal procedures and based their answers in personal opinions and informal knowledge. For Markowitz and Slovic (2021, p. 1-3), ‘immigrants [...] are viewed as less-than-human compared to ingroups in the US’ hence ‘[...] people treat immigrants harshly (e.g., more discrimination, harsher jail sentencing [...]) because they believe their humanness is inferior to other groups and they are incapable of thinking and feeling like other humans’.

In his words, the *afroesmeraldeño*<sup>4</sup> intellectual and activist Juan Garcia (2001 apud LINERA; MIGNOLO; WALSH, 2006, p. 36, free translation) states that, not acknowledging a person’s background equals not acknowledging that person as a being: ‘they have always told me that my knowledge is not knowledge, that my land belongs to no one, which makes me think that I am not a person’.

Within this dehumanizing process, Latinos living in the United States experience a distinct form of discrimination that operates in many spheres: unemployment, maltreatment in the criminal justice, language limitations, stereotypes, etc. In particular, one sphere is concerning: violent hate crimes against Latinos have risen nearly 40% in the beginning of the 2000s (GONZALEZ-BARRERA; KROGSTAD; LOPEZ, 2018). This discrimination has its

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<sup>4</sup> Ethnicity from the Esmeraldas - province in the North of Ecuador, which has suffered historically from severe armed conflicts, originated from the exploitation of natural resources in the region. Many *afroesmeraldeños* have migrated towards the north of the American Continent given the escalation of conflicts in the area - especially closer to the border with Colombia (GARCIA; WALSH, 2009). Juan García is a known author for his extensive literature on African and Decolonial studies (ESCOBAR; PADILLA, 2018).

origin in the contrast of the Latin and the Anglo-America as highlighted before by Darcy Ribeiro (2014), which creates the idea that North Americans are more evolved than South and Central Americans, justifying the violence against those. The Pew Research Center (2018 apud GONZALEZ-BARRERA; KROGSTAD; LOPEZ, 2018) found that national-born Americans described Latinos as the group most likely to face harsher and more often acts of discrimination. This leads not only to more Latin Americans returning to dangerous situations in their original countries, but also to more Latins being incarcerated since the dehumanization of Latin Americans plays a huge role in the criminal justice system, increasing jail time and level/type of punishment (TRUJILLO, 2012).

Beyond that, Latin immigrants who are incarcerated suffer from an additional type of dehumanization: the one focused on those who are perceived as enemies; those that, because of their legal transgressions, are submissive to harsh punishment. For Almaraz, Deska and Hugenberg (2020, p. 1615), ‘not only are prisoners often stripped of fundamental human faculties in ways typical of dehumanization but stronger dehumanizing judgments about prisoners tend to generate harsher punishments’. Certain carceral practices are often condemned by social and political organizations, and by prisoners themselves - such as long-time solitary isolation, physical punishment, privation of food and sunlight, etc. – for hurting the dignity of imprisoned individuals and treating them as animals,

The feeling of being [...] cut off from the world and isolated from other living beings, is echoed in the testimony of prisoners in contemporary US penitentiaries. [...]. One could describe this experience of loss and self-loss as a dehumanization; and many prisoners do (GUENTHER, 2012, p. 52).

The fact that a same individual may experience different types of violence within groups, having its humanity more or less hurt, is explained by the concept of intersectionality: different dimensions of life in society cannot be separated and must be analyzed in a complex interpretation, with economic, political, cultural, psychic, subjective and experiential variables being considered (GUENTHER, 2012). And although Latin Americans may share similar experiences while immigrants and detainees, such as racism and social marginalization, they are not a homogenous group, and it should not be assumed that they share one limited story. As a conclusion, this concept acknowledges that social identities (race, legal status, nationality, etc.) are interconnected and reinforce, mutually, the continuous interactions within the oppressive system of the United States (BRAH; PHOENIX, 2004).

This system is based on legal and social institutions working in different spheres and for different groups. Latins, immigrants and prisoners may be affected positively or negatively by these organizations, being supported or abandoned by them. For Maldonado-Torres (2016), the dehumanization within modern institutions happens through descriptive forms, such as ethnicity and social status. In that sense, as affirmed previously by Lucini and Oliveira (2021), institutions and its mechanisms, such as the international human rights regime and its conventions - like the Universal Declaration on Human Rights - are constructed on eurocentrism, leading to the fact that 'universal' rights are not universal at all, not considering the subalterns and their values, and creating a standard to what is 'human' and what should be guaranteed, excluding all other possibilities. In that way, considering Basto's critique mentioned before, political activity inside international organizations and states may work to maintain the power of those already ruling, not allowing just spaces for the oppressed - the colonized.

European studies (and North American influenced by it) have helped to marginalize colonized communities, making their work invisible. As a result, these communities are unable to create their own humanity, being excluded from formal institutions needed for protection, such as the state. Silva (2017, n. p., free translation) discloses: 'the modern state is an example of an institution that serves a class [...]. The selective justice, the majority control from interested economic groups has been the keynote in the way the state presents itself'. Still criticizing institutions, the author continues, 'the institution dehumanizes life; in general, everything that is institutionalized removes what's more important, the capacity of seeing the other as human' (SILVA, 2017, n. p., free translation). Nevertheless, the state is not the only institution that may work towards the dehumanization of oppressed groups. International regimes can function as a way to exclude groups that, historically, have not been considered fully entitled to rights, especially in colonized countries, where people are seen as less human (LUGONES, 2014).

In that sense, the mere existence of formal documents within the international regime of human rights, such as the American Convention on Human Rights and the Standard of Minimum Rules for the Treatment of Prisoners, does not secure rights to all individuals, especially those judged as a threat to current values and morals (REGO, 2014). Giorgi (2006) states that institutions create, through reproduction, a social imagination that legit order exists, hiding internal contradictions of criminality and its punishments. For him, this is only



possible within the current capitalist system, constructed on the colonization and the submission of the Global South. Agreeing, Zaffaroni (1989) adds that, given the criminal system's selectivity and the consequent impunity of those that are not vulnerable within it, institutions aimed to repress criminal offenses may end repressing determined groups instead.

These group's human rights, as stated before, only become valid when they develop into written norms (SILVA, 2012), considering that they are not seen as human beings originally: 'the process of colonization invented the colonized and invested in their full reduction to primitive beings, less than human, [...], and that needed to be transformed [...].' (LUGONES, 2014, p. 941, free translation). This civilization transformation justified colonization, and the construction of the 'human being' itself, implying who could be considered as one and who could not. As a result, the main dichotomy of modern coloniality becomes the hierarchy between human and not human, as mentioned previously (LUGONES, 2014). In unison, Sayão (2010 apud REGO, 2014) affirms that the violence against those colonized is justified by the idea that those are not truly humans, and it is enforced through institutions,

[...] 'dehumanization practices' [...] consists of treating certain human beings, as if they were something they are not, even ignoring the possibilities of building their own humanity. This treatment is imposed on an individual or a group of people without their consent. The inhumane treatment given [...] in the colonization of [...] America is an example of this: many [...] were treated as objects or animals, despite the existence of discourses for and against their alleged humanity (REGO, 2014, p. 54, author's emphasis, free translation).

These treatments have evolved and the notion that all humans should be treated equally emerged, creating legal instruments as seen previously. But their effectiveness is not yet universal nor assured, especially when judging immigrants from colonized regions,

[...] we can see that human rights' norms are formed by means of power that seek to normalize certain versions of the human being in detriment of others, making distinctions between humans or expanding the human concept conforming its will (BUTLER, 2015, p. 44, free translation).

In that way, it can be stated that, while the human rights international regime is idealized as a program that can reach anyone anywhere, criminal systems are used to establish inequality of rights in all societies (ZAFFARONI, 1989), creating a conflict between the

written right and the legal practice, and reinforcing the hierarchy of human and not human within the international human rights regimes and the state's national legal systems.

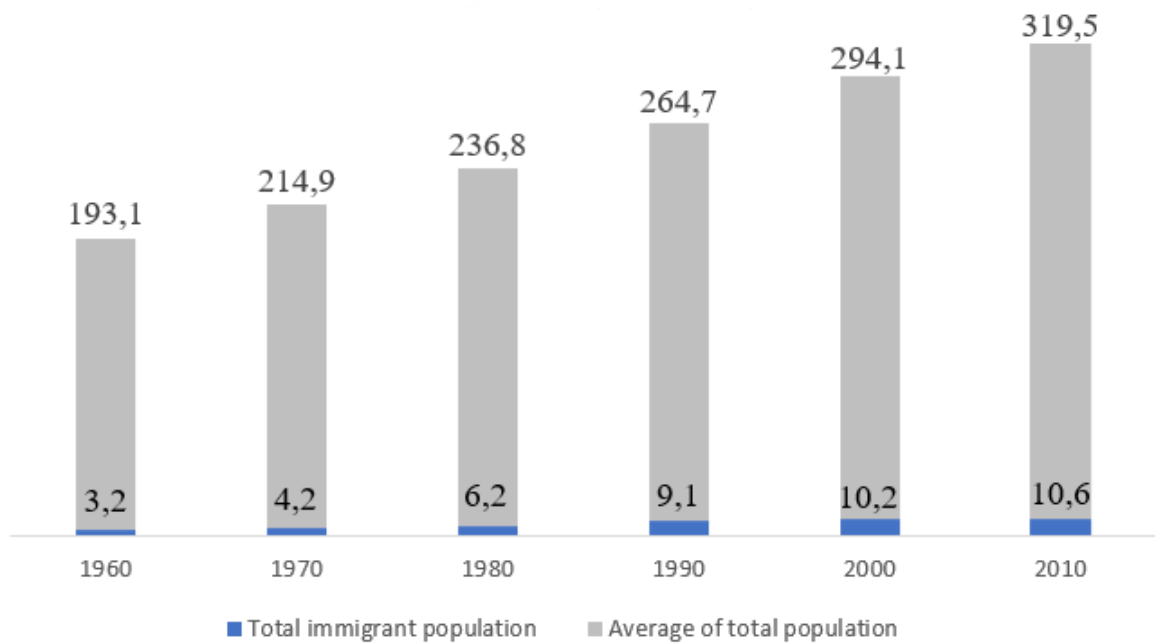
## **4 US MIGRATION TREATMENT**

A background revision of immigration policies is necessary to understand how current norms and behaviors were put in place. In that sense, the first section of this chapter will discourse on the United States historical migration treatment, with qualitative and quantitative data regarding the native and immigrant population from the 1960s until the 2010s, and with a brief examination of each decade's policies and public opinion related to them. Succeeding this first section, the chapter will focus with more details on governmental actions after the attacks on September 11<sup>th</sup>, followed by a detailed analysis of Obama's and Trump's administrations and policies, taking into consideration the public opinion, successes and failures, international and local support, the statement from the director lawyer of Lawyers for Civil Rights - that works defending immigrant's rights, interviewed by the researcher - and others for each period of time.

### **4.1 Historical perspective**

Even though the US has offered essential support to the creation and maintenance of the Organization of American States, the country is the most reluctant member of the Organization when following its human rights premises, not being a signatory of international treaties on these rights as seen previously (FERREIRA; KOERNER; MACIEL, 2013).

Throughout history, countries have always received millions of immigrants. In the United States of America, foreign citizens represent a great part of the country's population: in the 1960s, 1.6% of the population was immigrant; rising to 1.9% in the 1970s; and to 2.4% in the 1980s; and then jumping to 3.4% in the 1990s and the 2000s; later decreasing to 3.3% in the last decade (UNITED STATES DEPARTMENT OF HOMELAND SECURITY, 2020) - although these numbers reflect the variances in the United States, the small oscillations were similar to global tendencies throughout the decades (INTERNATIONAL ORGANIZATION FOR MIGRATION, [c2021]). The number of immigrants living in the country followed the national population growth, as Table 1 shows:

**Table 1 - USA population (in millions)**

Source: United States Department of Homeland Security, 2020.

Of the 10,6 million immigrants living in the USA in the last decade, almost 40% were Latin Americans, with 16% being Mexicans, 2.74% Dominicans, 2.5% Cubans, almost 2% Haitians and 1.5% from Guatemala<sup>5</sup>. Map 2, below, shows the percentage that each American region represented in the United States' total immigrant population during the 2010s:

<sup>5</sup> More information regarding USA immigrant's nationality can be found in 'APPENDIX B - Table with detailed number of USA immigrants from Latin America in the 2010s'.

**Map 3 - Latin immigration flow to the USA from 2010-2019**



Source: United States Department of Homeland Security, 2020.

Recently, industrialized nations have shown hesitation in continuing to participate in migratory processes. As in any other country, US presidents have supported immigration

policies based on ideologies, foreign policy needs, and public pressure aiming at electoral goals. In the USA, the Department of State, Justice and Labor is involved in the implementation of immigration policies and is represented by many congressmen that participate in the formulation of these policies. Governors, local governments and courts are also involved and participate in this process - with the government paying close attention to budgetary and public opinion concerns, and the courts to legal precedents and legislation. Additionally, the legal process suffers influence from corporations, businesses, and social and religious groups (MCBRIDE, 1999). Particularly in the USA, government and public have demonstrated objections when welcoming immigrants, based on the economic and cultural impacts of migratory waves: in 2009, 36% of the population considered immigration a bad thing for the country, while 58% considered it a good thing. Surprisingly, these numbers had notorious changes: by 2020, 19% of the population considered immigration a bad thing and 77% considered it a good thing. But these statistics do not summarize public opinion on immigration: still, during Obama's mandate, an average of 40% of the population was dissatisfied with migration policies and wanted the number of immigrants to decrease. During Trump's government, that number decreased to less than 30%<sup>6</sup> but still represented a good part of US citizens (GALLUP, [c2022]). This resulted not only in changes in immigration policies, but also in xenophobia within US citizens. For the director of the Immigration History Research Center at the University of Minnesota, Erika Lee (2020 apud MCNEIL, 2020, n. p., author's emphasis),

Xenophobia doesn't just reveal itself through a bigoted relative who is saying stuff about 'the Mexicans' at Thanksgiving dinner. Xenophobia is a form of racism that has been embedded in our laws. [...]. There are 'good immigrants' and there are 'bad immigrants' who are a threat to 'us'. The dividing line between 'good' and 'bad' has been marked by religion, national origin, class, gender, and sexual orientation. But especially race.

When asked if she thinks that xenophobia has been more present in US' migration policies in the last years than previously, Lee (2020 apud MCNEIL, 2020, n. p., author's emphasis) affirms:

It is, but one of the things that I try to emphasize is that you could not have Donald Trump and his policies without Bill Clinton and Barack Obama. You couldn't have

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<sup>6</sup> More information on the reason for these numbers was not available, but it can be assumed that the increase of media coverage on immigration policies and immigrants treatment has sensitized and changed public opinion.

so many Americans shouting 'build the wall' without the 2006 Fence Act that George W. Bush signed into law, and that Barack Obama helped to implement.

Despite claiming to be a 'land of immigrants', US treatment towards immigrants - especially Latin American ones - today is very different from previous decades and centuries. The United States created its immigration regulation right after it became independent from Great Britain at the end of the XVIII century, and its laws have always reflected the politics and migratory flows of times. In the beginning, they were intended to attract Europeans with higher levels of education: with the Johnson-Reed Act in 1924, quotas for immigrants were set based on national origins - with prohibited 'barred zones' from which immigration was restricted and 82% of the quotas were granted to Western Europeans. But then, especially from the 1960s, a switch happened, and the country's borders were opened to receive immigrants from other parts of the world (THE PLURALISM PROJECT, 2020).

After the Second World War, the United States became an attractive destination for a great number of immigrants: around eighteen million people moved there from 1946 to 1992. But as the population of immigrants grew, it started to be a concern in government expenses and a threat to cultural homogeneity in some communities, so the public pressured Congress to limit immigration and to review policies related to it. Following months of debate and already in Clinton's administration, in 1996 the American Congress passed the 'US Welfare Reform Act 1996' and the 'Illegal Immigration Reform and Immigrant Responsibility Act' (IIRIRA) that limited rigorously aid for immigrants and imposed more restrictions on immigration in order to decrease illegal arrivals (undocumented<sup>7</sup> immigrants became ineligible for most public aid programs such as Medicaid and food stamps). More severe restrictions included but were not limited to: programs that were established in the five states with highest immigrant populations to enable employers to verify their foreign workers legal status and record; more than a thousand new border guards and 300 new Immigration and Naturalization Service (INS) agents per year until 2002; punishments for immigration documents fraud increased (anyone trying to enter the US with false documents would be subject to deportation); immigrants seeking asylum would have to prove that they had a 'credible fear of prosecution' in the initial phase of their process; and no appeals were allowed against immigration judge's decisions. Also, a twenty-two kilometers triple fence on

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<sup>7</sup> The terminology 'undocumented' is preferred to 'illegal' in Decolonial studies, given the connotation that the second term carries when making reference to human beings.

the border between Mexico and the USA was built as a way to control illegal immigration (MCBRIDE, 1999). The IIRIRA eliminated the right of many immigrants to defend their cases in court, expanding those subjected to mandatory detention and significantly increasing the levels of deportation from that period forward - more individuals were deported between 2000 and 2015 than in the former 150 years (BERBERICH; CHEN; TUCKER, 2018).

Later, in 2000, the Legal Immigration Family Equity Act (LIFE) passed, limiting the number of immigrants through marriage, employment and other categories per country, and expanding the instruments of deportation. This act was backed by the long lines of immigrants waiting for green cards and visas at the time (MCBRIDE, 1999).

Although these measures already seemed very severe, many other harsh legislations were proposed and later rejected, such as the one denying public education to undocumented immigrant children; and the one limiting welfare benefits to a maximum of twelve months to immigrant families, making them subject to deportation otherwise. Reinforcing this, activists against migrants' rights stated at the time that 'immigrants were overwhelming schools and welfare rolls, trashing the environment, voting illegally in US elections – even acting as veritable double agents of Mexico' (MCDONNELL, 1996, n. p.). Additionally, the Federation for American Immigration Reform (FAIR, 1996 apud MCDONNELL, 1996, n. p.) declared that 'near-record levels of immigration are deforming the nation's character' and that it 'could have dire long-term consequences such as overpopulation, rampant bilingualism, reduced job opportunities for the native-born, and demographic shifts that could result in dangerous ethnic separatism'. For Michael McBride (1999, p. 18), 'the perception that immigrant groups were a threat to American culture and homogeneity often resulted in a rhetorical rather than rational approach [...] regarding migration policies. These kinds of proposals and speeches reflected the US government's perspective on immigration at the time and would influence future administrations, from which immigrants are seen as a burden and as a problem to be solved, and not as a part of the country's community as will be seen in the next sections.

#### **4.2 The path to a known future**

During the 2000s, many politicians wanted to show service after the attacks on September 11<sup>th</sup>, 2001. And as result, many proposals for policies regarding immigration were made at the time, like the 'Border Protection, Anti-terrorism, and Illegal Immigration Control



Act of 2005' (that focused on more rigid enforcement on the borders and the countryside) and the 'Comprehensive Immigration Reform Act of 2006' (that would give amnesty to a great part of undocumented individuals in the US to increase legal immigration). Both did not originate compromise or bills from them, not satisfying the public discontentment at the time (CENTER FOR IMMIGRATION STUDIES, [2018?]).

Most recently, US immigration policies have been molded by issues such as refugees waves, unauthorized immigration and terrorism. For D'Vera Cohn (2015, n. p.),

[...] while the international community views immigration and refugee policies from a humanitarian perspective and through the parameters provided by international agreements such as the 1951 Refugee Convention and the 1967 Protocol, nation-states, especially receiving countries, tend to view these issues through a combination of humanitarian, domestic, and foreign policy considerations.

As mentioned before, the terrorist attacks in 2001 drastically changed the public opinion around immigration issues and exposed the flaws in the US immigration system. This not only affected the public's perspective but also how governments formulate and implement immigration policies. All laws created, reinforced or removed after that episode were always changed under the shadow of the 09/11 attacks and this remains until our current days as will be seen in the following paragraphs.

#### **4.3 Obama era (2009-2016)**

For many critics, Obama's government was nothing extraordinary. In the short-term, Obama created a stable economy and left a legacy of non-scandalous governance, ending the combat in Iraq, reducing the number of US soldiers in Afghanistan and supporting international agreements such as the one regarding climate change signed in Paris (TIME, 2017), but besides its memorable mark of being the first African-American president and the one to implement a more human health care system and more LGBTQ rights, Obama did not differentiate itself from other US presidents when treating immigrants inhumanly. In the words of Coleman (2021 apud KAMARCK, 2018, n. p.), a historian from the Center for Presidential History, 'President Obama ended his two terms with few successes and a mixed legacy on immigration and refugee policy'. As discussed in the interview carried by the researcher, this 'mixed legacy' came from the high expectations that people had in Obama

when he took office and that were not attended - even though he made history for being the first African-American president, his policies did not work towards ending the structural racism within US institutions such as ICE, even when they achieved some improvements, as the access to HIV treatment and separate cells for transgender women (LAWYERS FOR CIVIL RIGHTS, 2022).

Obama's most positive executive action regarding immigration was the creation of the Deferred Action for Childhood Arrivals (DACA) program in 2012 and the Deferred Action for Parents of Americans (DAPA) in 2014. DACA postponed deportation and increased the eligibility for work permits by undocumented immigrants that were brought to the US as children, and although the actions were allowed only for a limited category of young individuals, by 2015, more than 665,000 applicants had been approved through the program (NOWRASTEY, 2017); while DAPA allowed parents of US citizens living in the country since 2010 to be exempt from deportation and to easily renew their work permits (VOA NEWS, 2016). And although the programs seemed promising, they were widely criticized and negatively classified by the public, since they maintained immigrants that were eligible for permanent residence as undocumented aliens, affecting not only their immigration process but also their life in different aspects (welfare aids, access to education and work, etc.) - by 2014, more than 21% of national citizens disapproved Obama's actions towards migration (GALLUP, 2022); and in 2015, DAPA was overturned by a Federal District Court becoming unavailable to anyone from that point forward; later in 2018, DACA was ruled as likely unconstitutional by a federal judge that allowed the program to remain functioning only until litigation processes were in order. Gladly, a lawsuit supported by several Non-Governmental Organizations was able to stop the program from being canceled and kept DACA in place, as mentioned by the lawyer interviewed by the researcher (LAWYERS FOR CIVIL RIGHTS, 2022).

In the opposite direction of these two policies, three billion people were deported during Obama's mandate - 50% more than during the Bush administration (NOWRASTEY, 2017). Obama also allowed the construction of more than 200 kilometers of fence along the Mexico-US border, continuing the work started by the Bush administration in 2006 (NICOL, [2021?]). For Terence Garrett (2010, p. 129), Political Science professor at the University of Texas, the construction of the fence went against environmental laws 'carefully constructed over the years' to protect people and their rights, and for the mayor of Brownsville (a border

town), Pat Ahumada, interviewed by Witt (2008 apud GARRETT, 2010, p. 130), the construction of the wall destroyed communities along the border to please political and ideological agendas, ‘the rest of America has no idea how we live our lives here. [...]. Our history, our families, our neighbors are tied together on both sides of the river<sup>8</sup>’.

For Alex Nowrasteh (2017, n. p.), Director of Economic and Social Policy Studies at the Cato Institute, to analyze Obama’s stand on migration is a complex task:

On the one hand, he is the harshest enforcer of immigration laws in American history, deporting more illegal immigrants than any previous administration. On the other hand, his executive actions have also helped shield from deportation some 750,000 unauthorized immigrants who were brought here as children.

For James Grossman (2017 apud TIME, 2017), executive director of the American Historical Association, even the hope that Barack Obama’s election would imply a step toward the end of racism in the US did not happen. And it is almost certain to say it had the opposite effect, leading voters to US traditional conservatism. According to Ballotpedia’s database (2017), more Democrat seats were lost under Obama's administration than under any other US president in modern history. For many, this led not only to a loss of credibility in the Democrat party but also to the rise of opposition figures like Donald Trump.

#### **4.4 Trump era (2017-2021)**

With conservatives on his side, Donald Trump won the presidential election in 2016 and promised severe immigration policies, such as the ban of Muslims, the deportation of all undocumented individuals, the triplication of the number of ICE’s agents, the construction of a wall at the border (paid by Mexico), and others. Many of these promises were signed and executed shortly after he took place at the White House, with more than 135 million potential immigrants and visitors being banned from the United States (CENTER FOR IMMIGRATION STUDIES, [2018?]).

Acting against public opinion, Trump also annulled DAPA orders permanently and announced that intended to phase DACA out right at the beginning of his mandate. While Congress tried to pass several parts of amnesty to preserve the project and failed, a great part

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<sup>8</sup> The ‘Great River’, that partially separates the USA from Mexico (AMERICAN RIVERS ORGANIZATION, [c2021]).

of Trump's voters supported these legal actions and the program was suspended in 2017 (BBC, 2017), affecting the more than 750 thousand individuals mentioned by Nowrasteh (2017) who waited for their legal status to be defined until the beginning of 2022, when the program was kept in place by a federal judge after a lawsuit was written in its defense, as mentioned previously. On the other hand, 70% of national citizens agreed that undocumented immigrants living in the USA should have the chance to become legal citizens at the time, with 61% being also against deporting immigrants with illegal status (GALLUP, [c2022]).

Later, in 2017, Trump launched the 'Pro-American Reforms' from which numerous executive orders were created in order to shake the US immigration agenda; these orders included the USA withdraw from the Trans-Pacific Partnership, the 'Buy American and Hire American' campaign, withholding funds from sanctuary jurisdictions, protecting the nation from 'foreign terrorist entry', ensuring proper vetting, and assuring the continuity of the border-wall construction supported by the former 2006 Secure Fence Act - 727 new kilometers of fence were placed in the border between the US and Mexico during Trump's administration (GILES, 2021). The president also signed and allowed a federal program that enabled any state or local law enforcement entities to receive authority, training and technology resources related to immigration enforcement within their jurisdictions (FEDERATION FOR AMERICAN IMMIGRATION REFORM, [c2022]).

For Zolan Kanno-Youngs (2020), White House correspondent for The New York Times, Trump's restrictions got harsher as the elections became closer: beyond the travel ban to thirteen countries, the president has also changed the procedures for visa applicants in different situations, affecting thousands of families from different nationalities. Trump's policies have affected not only undocumented immigrants, but also asylum seekers: the USA has reduced its number of refugee visas by 72% compared to the previous government - in 2017, 110 thousand visas were available for request, and in 2020, only thirty thousand could be issued (FEDERATION FOR AMERICAN IMMIGRATION REFORM, [c2022]).

And although these policies pleased a specific group of voters, the majority of the population did not approve them: Trump's public approval dropped from 45% at the beginning of his mandate to 29% by the end of 2020, with almost 70% of the population wishing for him to no longer participate in national politics (KEETER, 2021). Erika Lee (2020 apud MCNEIL, 2020) affirms that the immigration policies set by Trump's

administration have been so numerous, broad and so cruel that they cannot be compared to any other government; for the author,

They [Trump's immigration policies] have impacted every category of immigrant — from refugees, asylum seekers, illegal, and legal immigrants. And because they have been put in place by executive order, there has been no debate, no calling of witnesses, no rebuttal, no ability for experts, advocates, or lawmakers on either side to be able to contest the justification of the laws (LEE, 2020 apud MCNEIL, 2020, n. p.).

As explained in the interview carried by the researcher, several lawsuits were written to try to stop humanitarian immigration programs from being canceled; and many were successful, as the one that kept DACA in place (LAWYERS FOR CIVIL RIGHTS, 2022). All categories of immigrants and other individuals that were impacted not only by Trump's policies but also by Obama's can be found in 'APPENDIX C - Obama's and Trump's immigration policies and the public affected by them' with detailed information such as which policies have affected them, and qualitative data related to it. However, the most expressive policies - for this essay's purposes and for the large number of immigrants affected by them - are the ones related to the Immigration and Customs Enforcement agency and its protocols of large-scale detention, as will be seen in the following chapter.

## **5 THE OBSTACLES TO A DIGNIFIED PROCESS**

For Patrick Hayes (2012), scholar from the University of Makeni, policies of large-scale immigrant detention are not a result of post-September 11<sup>th</sup>, but something that has been embedded into how US conducts migration from the 1990s. Laws such as the Antiterrorism and Effective Death Penalty and IIRIRA, from which noncitizens were denied due legal process and the categories of felonies that require mandatory detention were expanded, were a continuous process and tripled the number of immigrants detained during that decade (HAYES, 2012).

To understand how this process of immigrant imprisonment happens, the structure of the Immigration and Customs Enforcement will be presented, together with the agency's objectives and protocols. Additionally, statistics regarding ICE's arrests will be indicated along with the public opinion on it. Following, a brief introduction of the detention center's protocols and functioning will be done. After, the discussion will be developed through two main sub-sections: the legal process and the human treatment that detained immigrants are submitted to. Both will be analyzed as how they are disrespected according to international treaties already explained in previous chapters, and the discussion will be based on stories and reports from former detainees, immigration activists and lawyers retrieved from reliable sources as the ones mentioned previously in the 'methodology' chapter - including the interview with an active lawyer in protecting immigrants' rights, carried out by the researcher.

### **5.1 What is ICE?**

In 2003, while the country was still recovering from the damage left by the attacks of 9/11, the Immigration and Customs Enforcement agency was created as a component of the Department of Homeland Security (responsible for aviation and border security, emergency response, cybersecurity, chemical facility inspector and others). ICE has the 2002 Homeland Security Act as a base for its formation, and absorbed the responsibilities of the former Immigration and Naturalization Service and the Customs Service (which was controlled by the Treasury Department). Besides serving as one of the main instruments of the US government for immigration and deportation subjects, ICE also serves as the central investigative agency within the Department of Homeland Security. One of ICE's main goals

is to guarantee that the institution's power leads to a complete investigation, arrest and removal of proven dangerous individuals. According to the institution's website (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, [c2021], n. p.),

ICE's mission is to protect America from the cross-border crime and illegal immigration that threaten national security and public safety. This mission [...] focuses on smart immigration enforcement, preventing terrorism and combating the illegal movement of people and goods [...] through the criminal and civil enforcement of federal laws governing border control, customs, trade and immigration.

Besides working as an internal actor, ICE is also responsible for a part of USA international relations, maintaining close relations with international partners such as states, foreign companies, foreign public agencies, etc.; and working in international operations that aim to end interstates terrorism (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, [c2021]).

ICE's funding got nearly 8,4 billion dollars just in 2020, and more than 10,4 billion dollars were requested by the institution for 2021 (GIVAS, 2020). This budget is used mainly to finance twenty thousand employees - including deportation officers, special agents, analysts, and professional staff - and more than 400 offices in the United States and around the world. Those work for the three operational leading directorates: Homeland Security Investigations (HSI), Enforcement and Removal Operations (ERO) and Office of the Principal Legal Advisor (OPLA) that are managed by a fourth directorate – the Management and Administration (M&A) office, which provides the necessary infrastructure for ICE's operations, and supervises the agency's performance when coordinating administrative and managerial functions, such as accounting, property issues, expenditures, and others (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, [c2021]).

ERO is responsible for issues regarding immigration laws and for issues outside the US borders, managing immigration enforcement processes, identification, arrestment, domestic transportation, supervised release, detention and its alternatives; the office also has deportation officers assigned to INTERPOL for the search and arrest of foreign fugitives. Deportation related issues are processed by ERO through the US immigration court system (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, [c2021]).

HSI is the leading investigative component of DHS with offices in more than fifty-three countries; working with foreign, federal, state and local authorities, it has legal authority to investigate all types of cross-border criminal activity and to conduct transnational criminal investigations, including financial crimes, cybercrimes, exploitation of children and child sex tourism, weapons smuggling and export enforcement, trade crimes, human and drugs trafficking, transnational gang activity, counterterrorism and others. HSI is the main contributor to the Joint Terrorism Task Forces led by Federal Bureau of Investigation (FBI), applying its own immigration and trade-based authority. HSI also works to prevent known human rights abusers from entering the United States through the joint work of national and international partners. Additionally, HSI also combats worker exploitation, child labor and other work-related crimes which commonly affect immigrants - especially undocumented ones - looking for work after arriving in the USA (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, [c2021]).

Lastly, OPLA covers the largest legal program of the DHS, serving as its exclusive representative; the office also provides legal services to all other ICE programs and offices (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, [c2021]). An organogram with ICE's complete structure can be found as 'APPENDIX D - ICE's complete structure'.

Since its implementation, ICE's programs have arrested more than 352 thousand 'removable individuals'. Just in the Fiscal Year (FY) 2019, ERO's officers arrested approximately 143,000 immigrants and removed more than 267,000 others from the USA (UNITED STATES DEPARTMENT OF HOMELAND SECURITY, 2020). ICE detention centers imprison around fifty thousand immigrants every year, and according to the American Immigration Council (2021), a Non-Governmental Organization that works in defense of immigrants' rights, the costs of these imprisonments reach an expense of almost three billion dollars a year.

During FY 2019, the number of detained individuals by ICE reached record levels: the detention center's average daily population reached more than fifty thousand people - an increase of 19% compared to FY 2018; and deportation of families increased 110% in two years, i.e. almost six thousand family units have been removed from the US just from 2019 to 2020 (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, [c2021]); and documentation analyzed by Maryam Saleh (2019), reporter of The Intercept for



immigration issues, showed that many ICE's offices have 'arrest targets' to be achieved through mass imprisoning of non-citizens,

[...] most ICE arrests happen through the aid from state, county, or city law enforcement officers. People who are stopped or arrested by local officers are often funneled directly to ICE, where they then face deportation. The main way for ICE to initiate this transfer from the criminal legal system to the immigration system is to send an ICE detainer request ('ICE detainer') to a state or local jail. This ICE detainer provides a notice of ICE's intent to arrest an individual who is currently detained by local officers. [...]. Over the years, various courts throughout the country have agreed that prolonging custody of a person solely based on an ICE detainer request is unlawful for numerous reasons. As a result of these lawsuits and the advocacy efforts to have localities disengage from involvement in immigration enforcement, many localities have stopped holding people on ICE detainees (i.e. maintaining custody of the person because ICE submitted a detainer request). Still, a majority of localities across the country continue to hold people for ICE (AVILA; GRABER, 2020, p. 1, authors' emphasis).

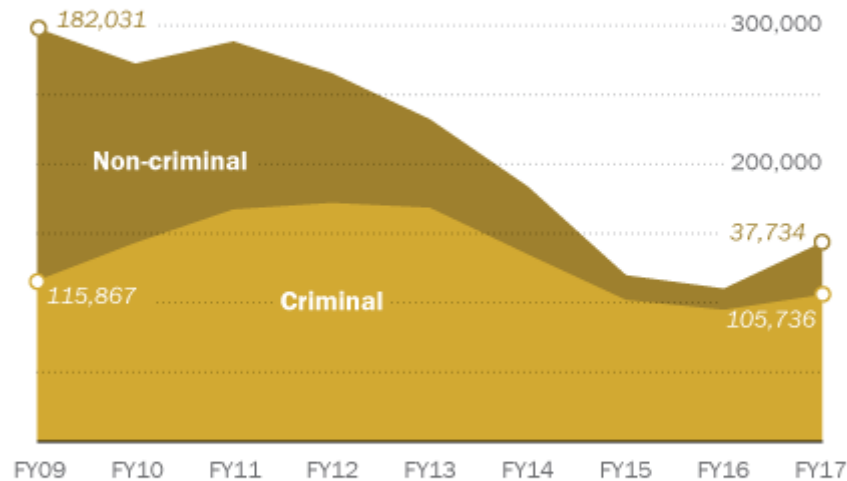
In 2019, ICE was classified as the federal agency less liked by Americans: more than half of individuals interviewed saw the institution in an unfavorable way. The agency was the only federal institution to be perceived more negatively than positively by the public (PEW RESEARCH CENTER, 2019),

The agency shapes the experience of immigrants in the United States in a powerful manner. [...]. Raids of workplaces and homes, increased involvement of local law enforcement [...] and steep growth in immigrant detentions and deportation have had an effect on the immigrant population. [...]. Undocumented immigrants, in particular, have been shown to experience an increased sense of insecurity, uncertainty about the future and fear (HAYES, 2012, p. 305-313).

Foreign-born individuals who are placed under arrest and custodial supervision are located in detention facilities that follow ICE's National Detention Standards (NDS) - issued in 2000 and more recently updated in 2019, setting general rules for the arrest and remand of individuals within ICE's detention centers (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, 2019). Each of ICE's detention centers must reach these standards evaluated yearly based on the Performance-Based National Detention Standards (PBNDS) to ensure that all custodians are safe and secured in appropriate conditions of detention, including having legal representation. However, several advocates have reported inhumane conditions within the locations.

Even though ICE's arrests of criminal individuals increased in the beginning of President Obama's administration, they have stabilized in the last years; and the arrest of non-criminal have significantly decreased throughout the last decade:

**Table 2 - Number of criminal and non-criminal<sup>9</sup> arrests made by ICE from 2009 to 2017**



Source: United States Immigration and Customs Enforcement (2018 apud BIALIK, 2018).

The Table above demonstrates the changes in the profiles arrested by ICE: in the Fiscal Year 2009, immigrants without criminal convictions built the majority (more than 60%) of those arrested by the agency during that time; while in the Fiscal Year 2017, most arrested individuals had prior criminal records<sup>10</sup>. However, even though these numbers may show a change in ICE's agents' behavior, it is necessary to highlight that most convicted immigrants had records of smaller infractions, such as driving under the influence of alcohol (16% of the total convictions), or immigration offenses, including illegal entry or false claim to US citizenship - 14% of convictions (BIALIK, 2018). Only during Trump's first fourteen months in office, 'the number of federal arrests of undocumented immigrants with no criminal record

<sup>9</sup> Note: the table includes only ICE's administrative arrests. 'Criminal' relates to any individual with prior criminal conviction in ICE's records, and 'non-criminal' represents individuals with pending criminal charges or with no past charges and/or convictions (BIALIK, 2018).

<sup>10</sup> Data from previous years is no longer available in the institution's website, but there was an increasing trend in arresting non-criminals in FY 2018 and 2019 compared to FY 2017: 41.6% and 35.1%, respectively; while the arrest of criminals has decreased 0.56% in FY 18 and 12.8% in FY 19 when compared to FY 17 (UNITED STATES ENFORCEMENT AND REMOVAL OPERATIONS, 2020).

have more than tripled’: 203% more compared to the previous 14 months of Obama’s administration - from nineteen thousand to almost sixty thousand (LEONARD, 2018, n. p.). For Avidah Moussavian (2017 apud BLITZER, 2017, p. 2), a lawyer at the National Immigration Law Center,

The largest federal law-enforcement agency in the country [Immigration and Customs Enforcement], which is seeking more funding and less accountability, is given carte blanche to go after who it wants. It’s creating this ballooning problem of subjecting so many more people to detention, with no interest from the federal government in providing resources to ensure that they have fair proceedings.

As will be seen in the following section, this broad-detention process not only affects immigrants when arrested, but through a long and painful legal process that surpasses the constitutional scope and enters areas protected and established by international law.

## **5.2 Admission to a lawful process**

Immigrants in legal processes are afforded with fewer legal rights than proved national criminals. Although non-citizens are protected, in some way, by the US Constitution, this only happens if they are arrested for crimes like robbery or assault - against unlawful searches and/or self-incrimination. If arrested for immigration issues and faced with deportation, immigrants do not have the right to a government-provided lawyer,

Without a lawyer — two-thirds of immigration detainees didn’t have one last year — they [immigrants] are highly unlikely to contest the validity of their arrests. They are also 10 times less likely to win their cases (RUSSAKOFF; SONTAG, 2018, n. p.).

In 2013, eighty-three percent of those deported from the United States did not have a hearing before a judge (AMERICAN CIVIL LIBERTIES UNION, [c2022b]). According to item 1 of the article 8 of the American Convention on Human Rights, ‘every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal [...] in the substantiation of any accusation [...] made against him or for the determination of his rights and obligations [...]’ which is reinforced by item number 2 mentioned previously (ORGANIZATION OF AMERICAN STATES, 1969, n. p.). For advocates and experts, most detained immigrants have done nothing illegal,

Many come to the border and request asylum because they are fleeing from violence in their home countries. In some cases, this can include domestic violence. But gang violence and political instability are also some of the reasons many make the arduous journey to the United States (DUNLAP, 2020, n. p.).

On ICE's official website, many processes initiated by detainee's attorneys against the institution can be found, claiming the violation of several rights, including the lack of legal representation and the accusation and arrest of individuals by civilians and not by ICE agents (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY, [c2021]). For the American Civil Liberties Union ([c2022b], n. p.),

In recent years, U.S. Immigration and Customs Enforcement has detained and deported record numbers of people from the United States. Many of ICE's removal tactics take away even the right to a fair hearing in court, as the government rushes to judgment and tries to ram people through a rubber-stamp system that ignores individual circumstances.

Citizens or not, individuals responding to immigration proceedings do not have the right to government-funded counsel, having to defend themselves in a long and complex legal process against a trained public attorney. This results not only in a stressful and psychologically violent process, but also in a physically impossible one. Many documents required for a due defense (police and hospital records, local news articles, certificates of birth, marriage or death, etc.) are inaccessible from inside the facilities. With no access to internet and minimal access to telephones, detained immigrants cannot obtain documents necessary for their cases and can barely get help from their families or lawyers on the outside, since most of those documents needs to be requested from other countries - often with precarious bureaucratic systems (BERBERICH; CHEN; TUCKER, 2018).

The system work in such a way that the burden of proof of citizenship rests with the detainee, who can have a difficult time obtaining such a proof under conditions of detention, especially since legal representation is not a right in immigration cases and the vast majority of detainees lack lawyers (HAYES, 2012, p. 308).

Many are the stories of those who were detained without knowing why or for how long. Horus Alas (2020), reporter from the Maryland Matters journal, revealed the stories of two Latin American men that were arrested for minor violations (driving without a license and passing a red light) and one that was arrested for no reason, and placed under ICE's custodia for months - which is a legal abuse, since, according to Illinois Legal Aid Online

(2021), a person cannot be detained for more than forty-eight hours before being convicted. The fact that prolonged detentions by ICE can be based on probable cause may result in unjust detention, like the cases mentioned before or the one of a woman (US citizen) that had her release ordered by a state court and remained detained in a local jail based on an ICE's detainer, with the claim that an investigation involving her had been initiated even though no reasons or details were provided to her or her representatives. After this and many other cases, federal courts have blocked ICE from issuing detainer forms, alleging that the organization's databases were too unreliable to support arrests based on probable cause and requiring prior removal orders to keep someone detained (AVILA; GRABER, 2020).

For Shah (2020 apud SHOICHET, 2020), executive director of the Detention Watch Network, after an extensive document research, it can be affirmed that ICE's operations are politically motivated: repeated cases suggest that ICE agents and police officers engaged in racial profiling by conducting warrantless searches, detaining individuals or groups without probable cause, and/or even soliciting bribe against the threat of building false evidence. According to the director interviewed by the researcher, ICE's agents profile individuals by language and race; for the interviewee, '[...] if you are black or if you don't speak English, you are likely to be in the facilities for a much longer period of time because if you are whiter or if you speak English, your process is accelerated and you have much better outcomes [...]' (LAWYERS FOR CIVIL RIGHTS, 2022, n. p.). In 2017, a Latin American immigrant with 'clean' and proper legal status was raped and detained by ICE for months even though the agents were searching for someone else at the time of her arrest; the same happened in 2016 with other Latin immigrant that was arrested on his way to work when ICE's officers invaded his apartment and then arrested him for months knowing he had no criminal records and was not targeted for immigration violation. These immigrants lived in the United States for years before these events and had their lives turned upside down by these unlawful arrests: losing their jobs, having their relations weakened within their communities and becoming financially dependent on others and/or government aid. In these cases - or in any other analyzed - ICE agents or local officers did not have to respond to the allegations made by imprisoned immigrants or to the consequences they caused in these individual's lives (RUSSAKOFF; SONTAG, 2018). This is backed by the fact that accusations against ICE's agents disappear together with deported immigrants,

At a time when every undocumented immigrant is a potential target and few are awarded lenience, the inequities in the immigration justice system are exacerbated. [...]. The courts operate with what their own spokeswoman calls ‘an outdated paper filing system’ and provide no public access to charging documents, evidence, or routine judicial decisions. Unlike police officers in criminal court, ICE officers rarely appear in immigration court to explain or defend an arrest. Their first names are often omitted from ICE’s equivalent of an arrest form, and sometimes, lawyers say, their full names are blacked out. Occasionally, ICE arrest forms, which are supposed to provide the government’s evidence of ‘alienage’ are never produced at all (RUSSAKOFF; SONTAG, 2018, n. p., authors’ emphasis).

For Jonatan Aroche-Enriquez (2018 apud RUSSAKOFF; SONTAG, 2018), attorney and activist for immigrant rights, the immigration justice system is unlikely to hold anyone accountable for contradictions in illegal arrests even when attorneys challenge those constitutionally. In the first six months of 2017, daily arrests of immigrants with no criminal records were 150% higher than the same period a year before (ROCHABRUN, 2017); however, on average, ICE’s arrests were higher during most of Obama’s administration compared to the first half of Trump’s (TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, 2018). This affects not only the lives of immigrant householders, but also their children. In 2017, a Latin high school student was arrested by ICE on gang association accusations and was gone for days until his parents could find out where he was detained. Given the delay in his legal representation arrival, he was no longer able to contest the evidence and was deported (DREIER, 2018). This student is, sadly, just one of many migrant teenagers stopped from getting education by unjust and illegal arrests. Only from 2017 to 2018, 816 minor high school students were arrested by ICE on gang affiliation allegations with inconsistent evidence - pictures of tattoos from people that do not have any, school uniforms with same colors as gang vestment, surnames similar to gang members, etc. The lack of a clear arrest and detention makes it harder for these children to have access to legal representation, denying the chance of seeking asylum or defending themselves in court. And not only many of them are obligated to live in dangerous and precarious conditions, away from their families in their home country, they also carry heavy criminal records for the rest of their lives, making it harder for them to get jobs or even to enter other countries (DREIER, 2018). The operation that resulted in the arrest of these children was planned in the end of Obama’s mandate and was carried after it was over (BLANKSTEIN; HELSEL, 2017), encompassing both administrations analyzed in this essay and showing how the systemic incarceration of Latin immigrants is an on-going process in US politics.

Since the COVID-19 pandemic in the beginning of 2020, all facility inspections have been canceled due to the spread of the virus according to the institution's website (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, [c2021]); consequently, information from what is happening inside the centers has become limited and the situation of individuals under ICE's custodia has been aggravated: detainees have reported no access to masks or soap, crowded cells, no medical care, etc. (LAWYER FOR CIVIL RIGHTS, 2022). Also, attorney's visitation to detention centers has been limited and a new system was established for arrests on the US - Mexico border: an agreement between ICE and private contractors changed how migrant children are treated when arrested, placing them in hotels and not notifying their families regarding their locations or their legal processes (LIND, 2020). This not only puts Latin children in possible dangerous situations by denying special shelters and sponsors (guaranteed by law), but also neglects the normal process that would allow them to seek asylum in the country with proper legal representation. Not enough, the agency has deported more than two thousand unaccompanied children in 2020, not considering the risks that these minors are being exposed to (PEÑALOZA; ROSE, 2020), alleging that,

We [US Customs and Border Protection] are trying to remove them as fast as we can to not put them into our system, to not have them remain in the United States for a long period of time, therefore increasing the exposure risk to the American people (MORGAN, 2020 apud PEÑALOZA; ROSE, 2020, n. p.).

Unfortunately, this kind of inappropriate treatment is not restricted to migrant children captured at the border. Documents analyzed and people heard by Blake Ellis and Melanie Hicken (2019), investigative reporters for CNN, revealed that ICE was placing immigrant children - who were currently living in the US - in federal and municipal facilities among national teenagers and adults, depriving those children from their rights as immigrants and exposing them to different types of violence, including unsupervised deportation.

According to an activist lawyer, who is involved in defending detainees and was interviewed by the researcher, the bad conditions of detention centers have always existed, and were only inherited by Obama and Trump through a continuing process. These institutions were always bad and neither of both presidents improved them. The most dramatic difference was the practice of separating families and terminating humanitarian

programs - initiated in Trump's administration and never done before (LAWYERS FOR CIVIL RIGHTS, 2022):

It was almost like 'how mean can we be?' [...]. We want to traumatize these people. We wanna make it hard - not just legally [...]. [...] other point that was very sealed and very palpable was the idea of everybody being in danger. We have been used to a high level of deportations in the United States, right? I was talking about that with Obama - he was deporting everybody he could, we got that, we could live with that reality in our communities. [...]. And so, when Trump comes in and he starts terminating these programs [...] the government is manufacturing more illegal people instead of giving people a status. And in many cases, [...] people who had been legal for two decades, for twenty years. And so, that created panic in the community because, if you can take away the legal status of somebody who has been legal for twenty years, then what can't you do to somebody who is illegal [...]. And so, the idea that we can do the worst things to legal immigrants left the illegal immigrants even more exposed, even more vulnerable (LAWYERS FOR CIVIL RIGHTS, 2022, n. p.).

Deporting noncitizens - adults or not - while their legal proceedings are still ongoing violates the constitutional rights to a due process. According to ICE's own records (2021 apud GARNICK, 2021), from 2011 to 2018, more than eight thousand noncitizens were removed from the United States by ICE while their legal processes were still pending. In one case, a mother and daughter were deported on the same day they were supposed to have a hearing to temporarily suspend their removal. Documents also suggest that ICE routinely removes noncitizens who have obtained immigration relief, whose deportation orders are legally erroneous, and even US citizens mistaken by noncitizens. Once deported, these individuals have virtually no means of successfully seeking resources and going back to the United States (GARNICK, 2021). The fact that 99% of families seeking to legalize their migration status will attend court hearings when they are given appropriate support - are paired with a lawyer or a social worker (LONG, 2019) - supports the defense of universal representation,

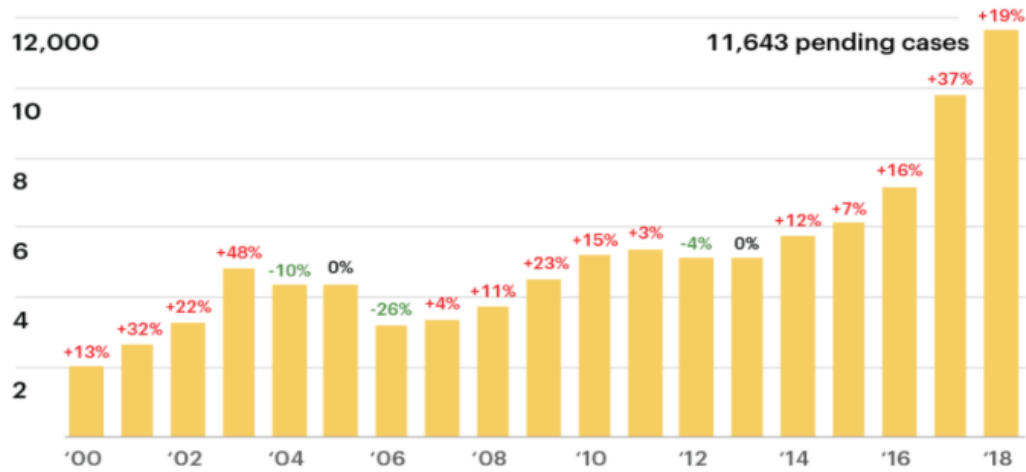
Considering the severe consequences of deportation, the lack of a right to government-funded counsel in removal proceedings violates due process and the basic fairness considered fundamental to the justice system and American society as a whole. As the Fifth Amendment to the U.S. Constitution, which has been held applicable to deportation proceedings, states, 'No person shall [...] be deprived of life, liberty, or property, without due process of law'. The right to appointed counsel, which the U.S. Supreme Court describes as 'necessary to insure fundamental human rights of life and liberty [...]' has thus far only been applied in criminal proceedings. Yet the complexities of immigration law and the severe consequences at stake make it unjust and unreasonable to expect individuals to represent themselves competently in immigration court. [...]. The lack of appointed counsel means that tens of thousands of people each year go unrepresented, including asylum seekers, longtime



legal residents, immigrant parents or spouses of U.S. citizens, and even children (BERBERICH; CHEN; TUCKER, 2018, n. p., authors' emphasis).

This is where NGOs play a fundamental role. For the lawyer and NGO director interviewed by the researcher, the key responsibility of Non-Governmental Organizations that provide legal support for low-income immigrants is to stop the federal government when it is violating constitutional and human rights (LAWYERS FOR CIVIL RIGHTS, 2022). This has happened not only through the provision of free legal support, but also through lawsuits written to stop the government from canceling humanitarian programs that affect immigrants, such as asylum seekers or temporary status holders. He affirms that these cancelations not only violate human rights from an international point of view, but also the US constitution from an internal perspective. Still, for the interviewed, the government is creating unfair barriers to immigrants' due legal processes through language (translated forms and a public translator are guaranteed by law, but not provided in reality) and racial profiling, based on the non-willingness of the US government to receive immigrants from certain regions - for him, the government became 'desensitized' to some Latin American nationalities, making it easier for legal steps to be skipped in their processes. Besides, for him, another big issue is the inconsistency in how immigrants are treated by ICE and the US government: some are deported immediately, others are kept in detention for months while some are kept only for a couple of days. This inconsistency not only violates the due process, but makes it impossible to predict the outcomes of an immigration legal process. For the lawyer, one thing is sure: the longer you stay in detention, the worse your outcome will be. To confirm this, he shared a sad story from one of his clients: a pregnant couple that got arrested at the border was promptly separated and placed in different facilities kilometers from one another; while in the detention center, the woman lost her baby after demanding medical care and not receiving it. For him, people not only go through this mistreatment and violence from ICE, but survive it (LAWYERS FOR CIVIL RIGHTS, 2022).

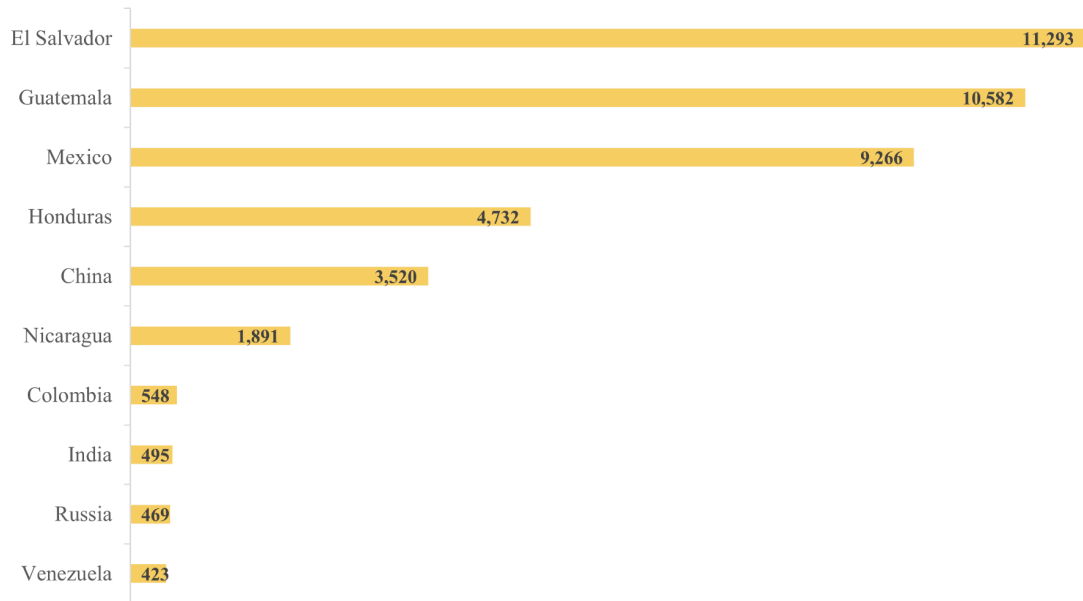
Anthony Enriquez (2017 apud BLITZER, 2017, p. 2), a lawyer in the Immigrant Defense Project, highlights that immigration offenders 'wear the same jumpsuits as criminal defendants. They're put in the same cells. Still, they don't have the same protections'. And even when immigrants have access to legal representation, they face unique challenges such as the high rates of backlogged cases that keeps them in detention for long periods of time (RUSSAKOFF; SONTAG, 2018):

**Table 3 - Number of pending backlogged cases in immigration courts (in thousands)**

Source: Transactional Records Access Clearinghouse, 2022.

As Table 3 shows, the increasing backlog of cases can be traced back even before Obama's mandates, but it was at that time that the Congress limited funds for immigration courts, leaving judges overloaded and accused detained for longer periods (BLITZER, 2017). A report from the federal Government Accounting Office (GAO, 2017 apud GARVIN, 2017, p. 2) showed that the backlog of cases was also boosted by 'a chronic shortage of immigration judges', especially between 2009 and 2015. For Blitzer (2017, p. 2), writer and reporter at The New Yorker, 'as more and more people have been arrested, detained, and ordered deported, the courts have remained understaffed and underfunded'.

This increasing amount of pending cases affects not only immigrants in detention, but also impacts their families emotionally and physically. For Kourtney Lovett (2016), attorney for immigrants' rights, the lack of structure to review immigration cases within a reasonable time leads to unjust trials that, in turn, lead to family separation, emotional and physical stress, reduction in family's life quality (a part of detainees is householders), and others, reaching even voluntarily self-removal from the United States. Most of this affected families are Latin Americans, as Table 4 shows:

**Table 4 - Nationality of immigrants affected by immigration court's backlog**

Source: Transactional Records Access Clearinghouse, 2022.

From the ten nationalities with most backlogged cases, seven are from Latin America, and represent more than 80% of all backlogged cases. There are more than 500 thousand cases waiting to be reviewed by immigration courts, and each one takes an average of two years to be solved, leaving immigrants - many only waiting for their green-cards or seeking asylum - to the terrible conditions of detention centers (TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, 2022). According to the international human rights mechanisms presented previously, all individuals have the right to good living conditions even when incarcerated. However, as the SMRs and other articles from the Universal and American Human Rights Declarations are not mandatory and do not create legal binding, hundreds of immigrants are mistreated inside detention facilities, with no access to basic needs. This mistreatment and how it affects detainees will be presented next.

### **5.3 Access to human treatment**

As ICE's detention standards (including medical care of detainees) are regulated by the agency's own guidelines, it is hard to evaluate the level of enforcement of basic rights;

moreover ‘there is an explicit connection between treatment and deportation status, with emphasis on keeping the detainee in good enough health to be deportable.’ (HAYES, 2012, p. 307). For many, the lack of health care available for detainees has been amply documented and the institution has tried to hide it from the press and from immigrant advocates (HAYES, 2012).

The lack of knowledge regarding their rights also aggravates the inadequate health services provided to detained immigrants. 171 detainees have died under ICE’s custody in ten years, from 2009 to 2019 (NOWRASTEH, 2020). For the Human Rights Watch specialist Clara Long (2019), a significant portion of deaths within ICE’s detainees are related to poor medical and health care - more than 44%. Items 1 and 2 of the fifth article of the American Convention on Human Rights (ORGANIZATION OF AMERICAN STATES, 1969, n. p.), state, in this order, that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

The classic political author Stephen D. Krasner (1983) has found that many deaths - specifically suicides - are linked to long periods of isolation of individuals with psychological disabilities. Letters submitted to The Intercept’s correspondent Cora Currier (2020) by Latin immigrants described the disturbing way in which immigrants are treated inside of ICE’s facilities. People were placed in lockdown inside their cells for almost 24 hours, with no access to bathroom or fresh air; women were neglected of basic feminine hygiene products; individuals received only two meals per day: a piece of bread in the morning and a piece of bread in the evening - sometimes moldy bread. Detainees also reported that those complaining or fighting these conditions were locked in solitary confinement for days as punishment. A former detainee said, in an interview to the NM Political Report (2020 apud CURRIER, 2020, n. p., author’s emphasis), that ‘the detention rooms have twenty-five bunk beds spaced about three feet<sup>11</sup> apart [...] a sink is attached to a toilet that ‘everyone has to use’ and [...] detainees have to clean the facilities themselves’. Allegra Love (2020 apud DUNLAP, 2020, n. p.), executive director of Santa Fe Dreamers Project (that provides free

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<sup>11</sup> Less than one meter.

legal services to immigrants), said that ‘private companies pay detainees only one dollar per workday inside the facilities’.

As stated in the rules 13 and 15 of the UN’s SMRs mentioned before, ‘all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health [...]’ and ‘the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.’, in this order (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2015, p. 5-6). And according to the World Health Organization (WHO, 1946, p. 1), ‘The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition’ and a minimum level of hygiene is necessary to ensure someone’s body and mind are healthy - including regular use of soap, proper clothing and habitation. ICE’s detention centers must offer all that to its detainees, according to their NDS (UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, 2019); however, many ex-detainees have reported different hygiene conditions inside the facilities as seen previously. Last year, Ronal Umaña (2020 apud LIND, 2020) exposed the sanitary conditions inside the facility he was held for years. According to Umanã’s testimony and to the audios he recorded while inside the detention center, he and other detainees went on a hunger strike for days to demand soap, toilet paper and other hygiene items during the pandemic. At least two other facilities registered the same situation just in New Jersey and stated that medical care is only given to detainees in ‘really sick conditions, with high fever or worse’, but Umanã and other detainees have affirmed that sick individuals did not receive any medical treatment despite the stage of their symptoms (LIND, 2020, n. p.).

Detainees and lawyers heard by CNN (2020 apud SHOICHET, 2020) also reported hunger strikes for better sanitary conditions in other cities, like Massachusetts. According to sources, the dynamic between ICE’s agents and ICE’s detainees has gotten worse throughout the last decade and a growing trend of hunger strikes and other forms of protesting were reported. For Silky Shah, executive director of the Detention Watch Network, in an interview to Shoichet (2020, n. p.), this behavior is ‘[...] not unique to any one facility. In so many different places, we’re seeing similar procedures and practices’ - twenty-five hunger strikes inside detention centers across the country were registered in 2020 (SHOICHET, 2020). An independent medical analysis supported by the Human Rights Watch (2018 apud SAWYER,

2019) was made based on fifty-two deaths of detained immigrants in ICE's detention centers from 2010 to 2018 and concluded that poor medical treatment contributed to more than half of those deaths.

ICE has dramatically expanded the number of people in its dangerous system, including particularly vulnerable individuals like children and pregnant women. For Victoria Lopez, senior staff attorney at the American Civil Liberties Union (2019 apud HUMAN RIGHTS WATCH, 2019, n. p.), 'ICE puts thousands of people's health and lives at risk by failing to provide adequate medical care to the people it detains for weeks, months, and even years'. In the last decade, advocates for immigrants' rights have filed several lawsuits against ICE demanding the release of medically vulnerable immigrants, but no judge has ordered ICE to comply within this research's timeframe. Legally, immigrants could wait for deportation cases on parole, not being exposed to threatening health conditions such as the ones exposed by the lawyer interviewed by the researcher and mentioned previously; but without regard to that and to the fact that several court rulings have proved the health risks to inmates, guards, and the outside community created by large prison populations (NIMNI *et al.*, 2020), ICE has declined hundreds of attorneys' petitions for their clients to defend themselves in freedom (LIND, 2020). The organization Freedom for Immigrants (2020 apud SHOICHET, 2020, n. p.) stated that,

As people inside their custody raise legitimate concerns and demands over their health [...] ICE and prison officials continue to respond with retaliation and abuse, meeting expressions of concern regarding the spread of COVID-19 inside detention with use of force.

The unsanitary conditions and the fragile health of detainees in ICE's facilities were also aggravated by the pandemic as mentioned before. Just in one facility in New Mexico, more than three hundred COVID-19 cases were reported in two days in August 2020, and other facilities have admitted that no protocols were being followed to avoid the spread of coronavirus inside their sites - with detainees piled in small cells and with no access to clean water or cleaning products (DREIER, 2018). After that, NGOs' doctors and lawyers have been working tirelessly to combat COVID-19 outbreaks among detained immigrants. A petition issued by the institution Lawyers for Rights' attorneys in March of 2020 affirmed that,

Despite repeated pleas from Plaintiffs and community advocates, and despite clear evidence that the dangerous conditions [...] where Plaintiffs are confined will imminently result in the uncontrolled spread of COVID-19 and the likely death of many detainees [...] defendants have continued to confine detainees in close proximity, without adequate soap, toilet paper, and other daily necessities; admit new detainees without COVID-19 testing or screening; deny access to testing and medical care for Plaintiffs and other detainees; and refuse to release even the most vulnerable detainees with medical conditions that heighten their risk for infection, sickness, and death (NIMNI *et al.*, 2020, p. 2-4).

According to their analysis, detained individuals were subjected to imminent infection, illness, and death because of their detention conditions during the pandemic. Those created a dangerous and hazardous situation that threatens not only the lives and well-being of detainees, but of guards and others involved in the detention process, including the surrounding community (NIMNI *et al.*, 2020).

Coordinators of the detention program for New Mexico Immigrant Law Center affirmed that the conditions in detention centers are ‘pretty abysmal’ and ‘hideous’. Emma Kahn, from this same organization said that ‘most of my days are spent on the phone as detainees are having panic attacks’ and Allegra Love stated that she has had clients trying to kill themselves because of the care they received inside the facilities and that agents lied to her about the well-being of those clients (2020 apud DUNLAP, 2020, n. p.). In an interview with Hannah Dreier (2018, n. p.), Love attested that,

What I can tell you about the facility is that I have witnessed so much human rights abuse within the walls of that facility for the last several years. Medical neglect, abusive treatment, the complete misuse of solitary confinement. [...]. The staff there over the last several years don't indicate that they have any respect for the human lives there.

This kind of mistreatment has been confirmed by the lawyer interviewed by the researcher, who mentioned a similar trend in the treatment given to Latin immigrants inside ICE's detention centers: individuals being kept in detention facilities with no access to food or to health care, in very crowded cells. For him, the conditions were already bad, but became life threatening during the COVID-19 pandemic, with no offer of masks, soap or water. And even though it changes for how long it happened with different detainees, this did not happen in one or two facilities, but in several across the USA (LAWYERS FOR CIVIL RIGHTS, 2022).

Agreeing with the testimonies above, many authors criticize ICE's detention process: for Sawyer (2019, n. p.) 'by locking up people who aren't a flight risk or a threat to public safety, the US guarantees a ballooning, abusive, and expensive system'; while for Chishti and Hipsman (2015, p. 3), 'family detention centers are morally deplorable and inherently psychologically harmful to young children and their parents'. This broad criticism points to and reveals a deep problem within US immigration system and law enforcement that dehumanizes immigrants, disqualifying them through communication and race profiling, erasing their identities not only as detained immigrants, but as Latin Americans. This problem cannot be solved with superficial actions, but only through a profound review of the country's laws regarding immigration and detention, and the treatment given to those swallowed by this intersectional system. A deep review in how the international human rights regime is applied within internal and national laws is also necessary to prevent cases such as the ones displayed in this essay from continuing to happen.



## 6 CONCLUSIONS

Having in mind the essay's general objective of evaluating in which ways Latin American immigrants confined in ICE's detention centers were dehumanized by the treatment given by the agency during the Obama's and Trump's administrations, the specific objectives were reached through detailed research. In order to meet the essay's specific objective 'a', the main documents and concepts of the international human rights protection system, such as the American and Universal Human Rights Conventions and the Nelson Mandela Rules, were identified and reviewed throughout the research, showing that the human rights regime can work both ways: protecting vulnerable individuals and groups, or excluding certain identities from legal protection or from being 'rights worthy'. When the Regime works towards excluding an individual systematically, as the USA migration system does, then the system is dehumanizing the person as explained in the first half of this essay. In this sense, the concept of dehumanization was described as expected in the specific objective 'b', being also identified in US immigration process.

The migration policies from Obama's and Trump's administrations were displayed according to the specific objective 'c', together with policies from previous governments; and showed how the dehumanization of immigrants happens within institutions in a continuous process in the US. The state's migration laws were described and analyzed within ICE's mission and operations as expected from the specific objective 'd'; showing how deporting people, locking them for an inconsistent period of time, reducing legal protections toward immigrants, and others, are migration policies that have been implemented by ICE and are backed by US national laws; placing the agency more and more distant from its mission of protecting the country and its people.

The international human rights protection systems were analyzed within their structures meeting the specific objective 'e', and showed that US federal laws have not embodied international human rights mechanisms such as the American and the Universal Human Right Conventions; consequently, these regimes have a limited reach on USA constitution and its policies. The fact that these same international documents do not create legal binding reduces their effectiveness on governments, and end up serving as a superficial way of pleasing public demands from human rights organizations and activists.

Reports and stories shared by ex-detainees or by people who have worked with them were told as set in the specific objective ‘f’, and showed how the US immigration system dehumanizes immigrants by not providing them with basic needs set in international standards. The stories were analyzed focusing on the provision of quality hygiene and medical care to detainees as defined in the Standard of Minimum Rules for the Treatment of Prisoners; and the provision of the due legal process assured by the Universal and American Conventions on Human Rights.

Based on the stories and data analyzed, the treatment given to Latin American immigrants can be evaluated as poor and inhumane; as the Immigration and Custom Enforcement agency, during the presidential mandates of Obama and Trump, did not provide detainees with materials to supply basic necessities such as proper food, soap, water and medical care, or the means necessary for detained immigrants to have a due legal process when immigrating and/or when being arrested. It is also essential to consider that the mistreatment given to Latin American immigrants is not a ‘Trump’s issue’, but a continuing process inside the United States migration system and the public attention to it must continue as governments change. Deportations with no previous legal process, lack of food and medical care inside detention facilities, physical and psychological abuses, no access to a translator and other damnable actions are practices from the US as a legal actor, not limited to one presidential mandate. Additionally, the non-condemnation, by international organizations, towards the United States government related to its violation of immigrants’ rights, and the fact that this state has not signed many human rights international agreements, questions international institution’s effectiveness, as well as the Human Rights Regime’s.

In that sense, it can be concluded that it is necessary to ensure that detention facilities can actually provide meaningful support to people as stated in their missions and values - instead of the treatment currently provided by them in practice, even if their process will not result in an actual immigration; and that international mechanisms for human rights actually work in favor of vulnerable individuals, not excluding them, but making sure their rights are not being violated in any condition. It is also important to mention that, even though this essay had as its focus Latin American immigrants, the mistreatment inside ICE’s detention facilities affects all immigrants - from all nationalities. And the dehumanization of detained immigrants destroys not only their legal processes, but their identity, turning them into a number with no value as human beings.

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**APPENDIX A - Interview guidance for workers from legal and social organizations  
related to prison systems**

Question 1: How do you evaluate the treatment given to detainees under ICE's custody?

Question 2: Do you feel like Latin American detainees are treated differently in ICE's detention centers?

Question 3: Do you feel like detainees are safer in their home country than under ICE's custody?

Question 4: Do you think ICE's detention centers were managed better or worse during other administrations than Obama's and Trump's?

Question 5: Do you feel like immigrants were legally safer during other administrations than Obama's and Trump's?

**APPENDIX B - Table with detailed number of USA immigrants from Latin America in the 2010s**

Country	Total of immigrants	Total immigrant population in the USA (%)
Argentina	47,955	0.45%
Belize	9,682	0.09%
Bolivia	21,921	0.2%
Brazil	115,404	1.08%
Chile	19,792	0.18%
Colombia	23,657	0.22%
Costa Rica	21,571	0.2%
Cuba	271,742	2.56%
Dominican Republic	291,492	2.74%
Ecuador	107,977	1.01%
El Salvador	251,237	2.37%
Guatemala	156,992	1.48%
Guyana	70,373	0.66%
Haiti	203,827	1.92%
Honduras	63,513	0.59%
Jamaica	172,523	1.62%
Mexico	1,704,166	16%
Nicaragua	70,015	0.66%
Panama	1,812	0.01%
Paraguay	4,623	0.04%
Peru	137,614	1.29%
Uruguay	9,827	0.09%
Venezuela	82,087	0.77%

Source: UNITED STATES DEPARTMENT OF HOMELAND SECURITY. *2019 Yearbook of Immigration Statistics*. Washington: Office of Immigration Statistics, Sep. 2021. Available at: [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/yearbook\\_immigration\\_statistics\\_2019.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/yearbook_immigration_statistics_2019.pdf). Access on: Jan. 10<sup>th</sup>, 2022.

**APPENDIX C - Obama's and Trump's immigration policies and the public affected by them**

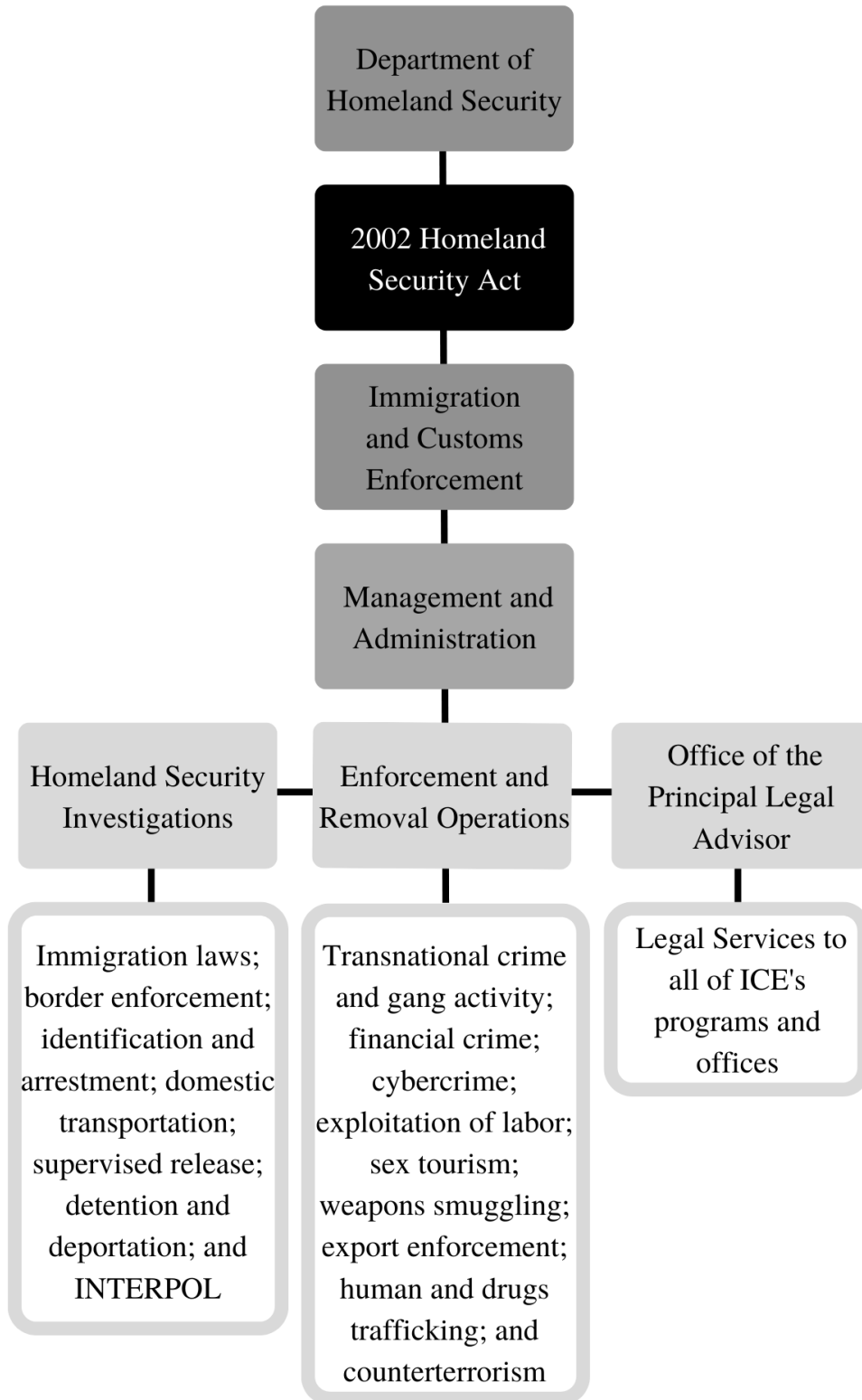
Policy	Administration/ year	Subject	Total of affected individuals
DACA	Obama / 2012	Allowed undocumented immigrants who entered the country before their 16 <sup>th</sup> birthday and before June 2007 to be exempt from deportation and to get a renewable 2-year work permit. In 2014, it was expanded to undocumented immigrants who entered the country before 2010, and eliminated the requirement that applicants should be younger than 31 years old (NOWRASTEH, 2017).	Six hundred and sixty-five thousand (NOWRASTEH, 2017).
DAPA	Obama / 2014	Granted deferred action status to undocumented immigrants who have lived in the US since 2010 and have children who are either American citizens or lawful permanent residents of the United States (NOWRASTEH, 2017).	Five million (JAWETZ; PASTOR; OCAMPO, 2015).
Fence along the Mexico-US border	Obama / 2009 - 2017	Construction of more than 200 kilometers of fence along the Mexico-US border (NICOL, [2021?]).	Almost three billion (PEW RESEARCH CENTER, 2021).
Fence along the Mexico-US border	Trump / 2017 - 2021	727 new kilometers of fence were placed on the border between the US and Mexico (GILES, 2021).	More than four point seven billion (PEW RESEARCH CENTER, 2021).
Executive Order 13769	Trump / 2017	Travel bans restriction of citizens of seven countries - Libya, Iran, Somalia, Syria, Yemen, North Korea and Venezuela (CENTER FOR IMMIGRATION STUDIES, [2018?]).	One hundred and thirty-five million potential immigrants (CENTER FOR IMMIGRATION STUDIES, [2018?]).
DAPA's annulment	Trump / 2017	The program never had effect (courts blocked it pending further litigation), but Donald Trump formally rescinded the policy (LAWYERS FOR CIVIL RIGHTS, 2022).	Ten million (BACHMEIER <i>et al.</i> , 2016).
DACA's phased out	Trump / 2020	Making potential recipients eligible for deportation (LAWYERS FOR CIVIL RIGHTS, 2022).	Four point three million children (BACHMEIER <i>et al.</i> , 2016).
Refugee visas reduction	Trump / 2017	72% reduction in refugee visas availability (FEDERATION FOR AMERICAN IMMIGRATION REFORM, [c2022]).	Not known.

Source: Elaborated by the author (2022).

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**APPENDIX D - ICE's complete structure**



Source: UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT. Institutional Homepage. *Immigration and Customs Enforcement Website*, Washington, [c2021]. Available at: <https://www.ice.gov/>. Access on: June 29<sup>th</sup>, 2021.

## APPENDIX E - Interview transcript

Interviewer: First, I would like to thank you for being here today and for agreeing to participate. I have a few guidance questions that we may use, but I also would like for you to introduce yourself and talk a little bit about your work at Lawyers For Civil Rights, maybe how you got there, and then we can use the questions if you think that's better.

Interviewed: So, my name is [interviewer's name hidden on purpose], I'm the executive director of the Lawyers For Civil Rights. We are an organization that provides free legal support to immigrants on a wide range of different issues. My organization has been around since 1968, we were founded as part of the civil rights movement in the United States, we are based in [organization's location hidden on purpose]. In the 1960s, in the request of President Kennedy, the White house challenged the legal Community to come together to provide free legal support to low-income people - especially people of color (black people) and immigrants - to use the resources of large law firms and the talent of the legal community to be able to protect black people whose civil rights were being violated, and to think creatively about how we could use the law to protect these communities. So, we were founded in the 1960s and we did a lot of work during that era to integrate institutions in the United States for centuries - many institutions have been segregated: there were schools for black children and white children, and the black children and the white children couldn't go to school together; there were housing developments in communities where white people lived and where black people lived, and so, they weren't allowed to live in the same communities together. And starting in the 1950s, in the 1960s and the 1970s, there was a lot of legal activity in the United States to end segregation and to start the process of integrating institutions. Some of the first cases involved schools, after schools, workplaces, also housing developments. All of these major institutions began to be integrated, starting with the first integration cases in the 1960s. We were founded in 1968 and we started the process of integrating institutions in 1968, so by the early 1970s we integrated the schools; by the 1980s, we had integrated Police Departments, Fire Departments, housing developments. And today, a lot of the work that we do focuses on fighting discrimination. Discrimination in the United States today is not just about black people, is also about *Latino* communities, *Latino* immigrants coming from many countries (from Mexico, Brazil, Haiti, Central American countries, and other Caribbean countries). And so, what we do today is fight the federal government whenever we see that the federal government is violating the human rights and constitutional rights of the people that we are here to serve. And so, for purposes of this conversation with you, Daniela, those communities are immigrant communities and our clients come from many different countries, but particularly from Haiti, we represent a lot of Brazilian immigrants, many people from Guatemala, Honduras, El Salvador and to a lower extent from other countries, but I could say, the majority are from Haiti, Central America and many Brazilians also. We work with them to make sure that the government is not creating unfair barriers to their legal processes. For example, we worked on a series of cases to make sure that the federal government is not separating a mother from the kids at the border; we worked on cases to make sure that, if they were separated, we could bring them together again; we worked on cases where the federal government did not provide immigrants the opportunity to apply for asylum or refugee status; and we also worked on cases where, especially Haitian immigrants are being discriminated at the border and they are not being provided with an opportunity to come into the country or are being detained in really horrible conditions in federal facilities at the border. And so, all of those cases and all of those situations are things that we would get involved with to make sure that their legal rights are being respected and that they have access to what, in the United

States, we call 'due process protection', right? So that you can appear in front of a judge, so you can have a day in court, so that people are not getting deported immediately without having an opportunity to apply for asylum. So, all of these due process protections and constitutional protections that apply, but that very often the federal government does not respect because the immigrants are coming from countries like Haiti, and they don't want those immigrants here in the United States. I know I've given you a lot, but I just wanted to give a little bit of an overview of what our work has been historically and some of the work that we do now.

Interviewer: That's amazing, thank you so much. So, I have a couple of questions and if you don't feel like answering any of them, please just let me know, you can skip to the next one. They're very simple straightforward questions related to the focus of my essay, so I'm just going to shoot them out to you, and you can answer them as you prefer. So, the first one is: how do you evaluate the treatment given to detainees under ICE's detention centers? I'm not sure how much you guys work with ICE's detention centers specifically, but if you can just give me an overview or maybe from other federal agencies that would be good as well.

Interviewed: We have had significant concerns about conditions in immigration detention centers, a couple of examples: we had reports of people being detained by immigration for more than 60 days and during that time, they have not been able to see a doctor, many times they are being held in really crowded conditions, in a cell where you can even lay down because there are so many people and during the pandemic, many of the people are reporting that they don't have... Because you are so crowded, you don't have space, you don't have masks, and that you don't have consistent access to water, sanitation, soap and disinfectants. So, the conditions have been terrible even before COVID hit, but with COVID, the conditions have become even life threatening. We have talked to immigrants who recently left detention facilities who came into the detention facility without COVID - they were fine - and who got COVID during their confinement with ICE, and then were released from confinement without any medical treatment, without any concerns about health. We also had reports of people who need... For example, there's a family we have been working with here in [location hidden on purpose]: a Haitian family, a couple, and she was pregnant when they were arrested by immigration at the border, they were separated. So, he was sent to a facility that was hundreds of miles away from the facility where his wife was held, and they were separated for over a month, and during that month, his wife had a miscarriage in the facility, she had consistently requested medical attention and they refused to give her access to a doctor, and she eventually had a miscarriage in the facility. So, we have not only the reports that we hear, but we are working with people that have survived this level of violence and this level of mistreatment, we are also working right now with many people who reported being starved during their time in the detention facilities, no food, just one piece of bread a day. Many people who fainted while they were in detention because of no water, no food, and so, it is particularly problematic with children who are made to just share a piece of bread with their parents, with their mother or father. And so, we have consistently worked with people who are being released from detention facility saying, 'I didn't have food, I didn't have water, I didn't have access to a doctor', who got sick in the detention facility and still didn't get access to a doctor and with many people who have been particularly affected by the pandemic with conditions in detention facilities not meeting sanitation guidelines for the pandemic. And so, the conditions at the border... This is consistent, this is not happening just at one facility, this is happening at many different facilities: in Texas, in California, in Arizona. The stories are all extremely similar, we are meeting with people who were released from facilities in southern Texas, in



Arizona, in California, who are now living in [location hidden on purpose] who all report similar experiences. The difference is how long people were kept in detention facilities, there are a lot of inconsistencies: some people are released after a day or two, some people are kept for two months; so, it really varies. It doesn't appear to be an explanation of why somebody could be released quickly, or other people are released very slowly. That varies extensively, and the other thing that varies is whether people are released or whether people are deported immediately. And that we have seen differences, so for example, if you try to enter through Texas it is more likely that you will be deported immediately without being given the opportunity to come into the country, they will just pick you up and send you back immediately, which has many problems: it has the due process violation - you don't see an immigration judge before you got deported. But we are seeing that in Arizona, many people who come in are taken in and detained, and then released into the United States. And so, we are seeing differences in those aspects. Even though everybody reports being mistreated, everybody reports having no food, no medicine, no COVID protections, the differences are whether somebody comes into the country or gets deported, and the differences also in how long it takes for them to either come into the country or to get deported - how long they stay in the facilities. Those are the distinctions that we've been able to make, but it is not clear to us why in some regions the preference for deportation and in some regions, like Arizona, the preference would be for releasing them into the United States. So, we do see some of those distinctions, but those distinctions - and are meaningful distinctions - in how people are treated there is no difference, we see that treatment - or mistreatment - in every region in the border.

Interviewer: Ok. And you mentioned about deportation, so I would like to ask you if you feel like detainees maybe are safer in their home countries than under ICE's custody, in general? Or if you feel they are still safer in the USA, in detention centers, then they usually would be in their home countries?

Interviewed: That is difficult to say, because there are many immigrants who are fleeing and so, it's difficult to tell somebody who could be killed if they go back to their home country, maybe by a gang or because of domestic violence or because of government prosecution. There are just so many different sources of violence. So, if people are fleeing violence, it's very difficult to say, 'or maybe you should just stay in your country'. I think those people have the right to migrate, to go to a place where they would be safe. I think the problem is, again, the inconsistency and how we are treating them. We need to have, in the United States, a consistent policy: people should know that if they get picked up by immigration, that they will be in federal custody for 72-hour or whatever, right? And then, at that 72-hour point, we should be able to determine 'is this person going to apply for asylum and come into the country, or do we have to deport this person?', but we don't have that in the United States, there is no consistency. So, you can try to come in and never make it, or you can try to come in and get immediately deported without even offered an opportunity to apply for asylum, or you can try to get in and get offered asylum and then you are ok. It's just that inconsistency is very problematic because it leads to outcomes even for people who are similarly situated: we could be running from the same type of problem, we could be people who are being persecuted, we arrive at different sections of the border and get treated in completely different ways. And that inconsistency, to me, is very problematic, because it means that we are not giving immigrants the same legal protections in a consistent way. And so, if you ask me, I think we need to fix the way the immigration system comes into contact with immigrants, and we also need to strengthen the services that are available for immigrants in detention facilities.

No one should have to be there for two months, no one should have to be there in a crowded cell, no one should have to be there without food or doctor; and so, making sure that the detention facilities can actually provide meaningful support is very important. But as you can imagine, Daniela, there is very little political interest in having detention facilities that are good, people don't want to spend money on that, spending money on a detention facility is a very low priority, you know? People want to spend money on a school, people want to spend money in a community hospital, in a public library, in getting more parks and recreation facilities for kids and adults. So, those are priorities for the government - I'm sure similar to the priorities that you have been seeing in Brazil, right? And so, when we ask for more resources for immigration facilities, people don't care, and it is an extremely low priority for the federal government and even for the public. There has been public outcry on a number of locations, for example, the latest one with the Haitian crisis that happened in August and September at the border, where we saw in the United States - everybody saw - these images of black people being rounded up by immigration officers like cattle, you know? Like slaves, with immigration officers on horses rounding up in a lasso black people and then putting them under a bridge. I mean, they weren't even in a facility, there was no roof, no floor and they were exposed to the elements. And so, we put them in camp, it was like a refugee camp, I mean, it was horrible, horrible. And so, when the images came out, that the black people were being rounded up, that they were being placed under this bridge in a tent, like a refugee camp, then there were a lot of outcries, a lot. People were very angry, and so, what the government did is that it immediately emptied the camp and put everybody in the detention centers so they could get processed in the detention centers. But, you know, we work with people who were in the detention centers, we work with people who were at the camp, we work with people who were rounded up like cattle, like slaves, those are our clients right now. And so, they are telling me 'I spent seven days under the bridge, and when I was there, nobody gave me food, we needed medicine - there was no medicine, and we were waiting for the government to call us, and when the government would call us and we wouldn't show up, and then they would... they would take us to a center, and then I would get to the center and at the center the conditions were even worse because I didn't have a place to sleep, there was no bed, there was still no food, there was still no doctor, and I had no idea how long I was going to be there'. And so, our clients had a really awful experience under the bridge and then even once they came into the facility. But nobody talks about that, nobody talks about how horrible being in the facility is. You know, when the public outcry happened it was 'we shouldn't be treating them like slaves, we shouldn't be making them sleep under a bridge', but then, nobody is talking about how they don't even have a space to sleep in or a bed or a blanket when they go into the building - the building is really bad too! But nobody talks about that. And so, even with the public outcry, once, you know, the government cleared the bridge, the camp; then, there was no outcry about the fact that they still didn't have blankets, or food, or beds, or medicine - nobody cared, you know? So, it is difficult to get public support for really treating people in a meaningful way, you know? As in the United States, we have more resources than so many other countries, and we still have not been able to get this right. And I think it is both a human rights violation - for international principles of how people are treated, but also a violation of the United States of domestic constitutional law to have detention facilities where people are dying, or where people are experiencing severe mistreatment. And very often what we hear is that the people who get food first are the white people or the people who speak English. So, if you are black, you eat last; if you speak Haitian Creole, you eat last, right? So, the people who are white - if you are white, you eat first, if you speak English, you eat first. We also heard that if you speak English - and it makes sense - you get out faster, and it is because you can communicate, you can say to the immigration official 'this is why I'm here',

you know? Or ‘this is my family, let me give you their contact information’, right? You can talk, you can talk your way through the process, explain your ‘I need to request asylum’, ‘I am a victim of domestic violence’, right? You could communicate more easily. When we talk to people who don’t speak English, one of the main problems is a communication barrier. And the government is supposed to provide a translator, but it does not, it doesn’t. So, people can’t communicate, they can’t say ‘I want to apply for asylum’ or you can’t say ‘I need a doctor right now’, right? And so, we have these outcomes that become even worse for people of color and for people who don’t speak English, and so it is really interesting to track these outcomes, right? And so, in a way, even though everybody has to go through the same miserable conditions, it’s almost like, if you’re whiter or if you speak English, the process is accelerated so that you don’t have to be exposed to those conditions for too long. So yes, you’re going to have to, you know, be in these awful conditions, but maybe just for a couple of days; but a family coming from Haiti will have to stay there for a much longer time. And so, we feel that those instances are exactly where discrimination is happening, because you can’t request a doctor, you can’t request more food, you can’t explain that you need refugee status. So, in staying there for a longer period of time, it compounds the negative outcomes, because if you are sick, you’re gonna get sicker and you’re not going to get a doctor; or if you are exposed to COVID in there, you’ll likely catch it because you’re going to stay there for a longer period of time. So, it’s just, the outcomes compound in a negative way the longer you stay at those facilities. And if you are black or if you don’t speak English, you are likely to be in the facilities for a much longer period of time.

Interviewer: Ok, yeah, that makes sense - it is awful, but it actually makes sense within the system. So, you entered the subject of politics, and my thesis is specifically on the Obama’s and Trump’s administrations, I’m specifically analyzing the conditions within these two governments. So, I would like to ask you if you feel like detention centers were managed better in other governments before these two? And in that same sense, if you feel that immigrants were legally safer during other administrations than Obama’s and Trump’s?

Interviewed: You know, it’s tough because the conditions I’m talking about are nothing new, there has always been a problem with overcrowding, capacity issues, facilities not having enough space, not having enough food, not having enough medicine or doctors - those issues have always existed. Obama did not fix any of that, and Trump did not create that, that’s the system that Trump inherited and he didn’t want to fix it. So, what we have is a continuity of miserable conditions in detention facilities. None of that changed. You also have to remember that Obama was very actively involved in the deportation of millions of people and so, I don’t know if people were necessarily safer. I think there is a distinction though that is very important: and one is that, under Obama deportations were happening very actively - active deportation, high numbers of deportation, but the government was also, at the same time, maintaining a number of different immigration protections and programs, for example, Obama created the DACA program for immigrant children, and so that gave an immigration status to hundreds of thousands of kids - almost a million, not quite, but maybe about 700 thousand/800 thousand, I mean, a large number of kids. And so, the government was simultaneously deporting people and protecting people because the DACA’s kids didn’t have a status before that, they were undocumented or illegal - however you want to say it. So, the DACA’s kids were undocumented, they could have been deported, but Obama created that program to protect them. Obama also inherited many different programs that had existed for a long time, like temporary protection status (TPS) - which doesn’t apply to many countries, but it is applied to countries that have a lot of immigrants, like El Salvador, and Honduras, and

Haiti. And so, Obama continued these programs. Which is fine, right? He inherited them and he continued them. He wasn't going to extend them, and he wasn't going to end them. So, he just kept them in place. So, we had many immigration programs like TPS that stayed in place during Obama; then we have new immigration programs like DACA that are being created; but all simultaneously you are still deporting a high number of people and you are maintaining miserable conditions in the detention facilities. So, it's a complex landscape, with the continuity of bad practices and good policies all at the same time. Then, comes Trump, and Trump realizes that there are programs like Temporary Protected Status that he could end because they have to be renewed - and very so often. And Obama had always renewed them, and every administration even before Obama had always renewed them. It was not a political thing, these programs have support from Democrats and Republicans, from liberals and conservatives, because they were humanitarian programs. And so, like Obama did in renewing them, many governments had renewed them for like twenty years. And so, for many administrations, these programs just kept being renewed and being extended. And when Trump comes in, he realizes 'I don't have to do that. There is nothing telling me that I have to keep these programs. I could end it'. And so, Trump started actively ending every single humanitarian program that had existed for two decades - for twenty years some of these programs, even longer. And then Trump starts realizing that there are many different ways - for example, applying to asylum - and he starts to narrowing the categories that apply for asylum. Which was extremely problematic. So, for example, women fleeing domestic violence: Trump's administration said, 'no longer can qualify for asylum' or 'people fleeing gang violence can no longer apply for asylum'. So, not only was he ending programs that were discretionary and that had been approved and extended by every administration for many years. So, he was taking those and ending them, terminating them. But he was also looking at programs that have been very well settled like asylum law and trying to find ways to limit and narrow that so that people wouldn't qualify anymore. And then he started looking at the facilities that we have been talking about at the border - which are horrible - and there is no reason to improve them, so he didn't improve them. But one thing that he did that was different is that he actually started the practice of separating the children from their parents - which had never been done before. And so, all of the sudden we see that children are being separated and being placed in these separate facilities that are just awful. And so, that is different. That has never happened before. You know, as miserable as the facilities were, at least that families were kept together, and so children weren't being separated and placed in their own horrible prisons. And so, all of the sudden we got word that families are being separated and the children are being taken to their own separate facilities. And so, it just... It was... It was really... Started to spiraling down, right? When you start... It was almost like 'how mean can we be?'. So, it's the trauma - was the goal. 'We want to traumatize these people. We wanna make it hard - not just legally, right? You come, and we are not gonna give you asylum because we are gonna say that victims of domestic violence no longer qualify, so we are not gonna give you legal advice or support. And then if you come anyway, we will take you away from your children'. Right? So, it was like the trauma was almost the goal, the intent. And then the other point that was very sealed and very palpable was the idea of everybody being in danger. What do I mean by that? We have been used to a high level of deportations in the United States, right? I was talking about that with Obama - he was deporting everybody he could with, we got that, we could live with that reality in our communities. But we knew that were also immigration programs that were available to people who would qualify so they would not get deported. And people did the best they could to try and get into one of those programs and qualify - like Temporary Protected Status or DACA. And so, when Trump comes in and he starts terminating these programs, taking away DACA

(trying to make the DACA's kids illegal again), taking away TPS (to try and get those people to be illegal again). So now the government is manufacturing more illegal people instead of giving people a status: the government is actively taking it away. And in many cases, taking away the status of people who had been legal for two decades, for twenty years. And all of the sudden the government is saying 'you are no longer legal under Trump'. And so, that created panic in the community because if you can take away the legal status of somebody who has been legal for twenty years, then what can't you do to somebody who is illegal? I mean, like, the idea and I know that this is a very imperfect analogy, but it's almost like a Nazi thing like 'I'm gonna come after you first and I'm gonna show that I can, you know, that I can attack you, that I can jail you and because I did that to you, people who are more vulnerable need to know that they're are and that the next day we will be even worse with them', right? Because 'we gonna take the people who have the status, we are going to strip them out of the status and try to deport them'. Now, where does that leave people that don't have any status, right? And so, the idea that we can do the worst things to legal immigrants left the illegal immigrants even more exposed, even more vulnerable. And so, that sense of panic was something that we have not experienced before. People were always worried about deportation, but not like that - not like that fear of 'wow my cousin who has immigration status is going to get deported, and what does that mean about me? Because I have never had an immigration status'. And so, that sense... It really had a big ripple effect in sending people into a state of tremendous fear in the community - where, for example, DACA's kids stopped participating in the program all together because they were afraid that immigration was going to show up at their house. There were people with TPS who had been, like I said, in the United States for twenty/twenty-five years - very stable, very very stable, many people that had been in the country for that long with that statuses were also very prominent people, they owned businesses, they owned property, in one case for example, somebody we worked with, he owned several restaurants, employing, you know, dozens and dozens of people. These are community's leaders. And all of the sudden, the government is showing up at their house saying 'you are illegal. We are going to deport you' and having a really destabilizing effect on people who had been in our communities for twenty or thirty years, who were community leaders, who owned businesses, who are extremely well established, whose kids are in college, who own, you know, just... Community pillars that are being attacked by the Trump administration in ways that have never ever happened. And so, it got really nasty, and people started panicking a lot. And then, the lawsuits started happening. We filed several lawsuits against the Trump administration: one to stop them from canceling TPS, one to stop them from canceling DACA, one to stop them from canceling... And the list just goes on and on, you know? And a lawsuit to protect each program basically. And luckily, the lawsuits were very successful: none of the programs were canceled. And we were able to maintain the status quo until Trump left office. And when Biden came in, we were in the process of wrapping up those cases. And the lawsuits against the Trump administration were really important to make sure that people saw that they weren't so vulnerable, and to show to the federal government that it couldn't simply decide one day 'I'm going to go after you and deport you'. That's illegal. But the government tried to do that.

Interviewer: And would say that that's kinda like the key role of institutions such as the one you work in? To stop the government from doing that.

Interviewed: Yes, absolutely, absolutely! And we were highly successful, especially during the Trump administration, in doing that. You know, the government in the United States has always had a really terrible history of discrimination. And if you look at the history of, for

example, Central America's migrants: when the civil wars started in Guatemala and El Salvador, the United States supported the regimes, you know? We supported the regime in Brazil, right? And what happened during the 1980s is that people that were fleeing - the United States would not process the asylum of their applications because it would be embarrassing for Guatemala or embarrassing for El Salvador. And would be, like, admitting that the regimes were bad and that the conditions were bad. And so, we didn't accept those refugees. There was a major lawsuit that was filed in the late 1980s called ABC Lawsuit - stands for 'American Baptism Church' (ABC). And so, in the ABC Lawsuit, the government got sued saying that they were discriminating against people from Guatemala and El Salvador in not processing their asylum cases. The government ends up settling the case and creating opportunities for those nationals to apply for asylum. I was very young when that happened, but I remember it because it... A lot of people talked about it in the community. I remember in the 1980s, when I was a kid, people talked about 'oh the ABC Lawsuit' and 'what's happening with the ABC Lawsuit'. And it's funny how the world turns, right? Like so many years later, fast forward, I'm a lawyer and when Trump took office and started dismantling the different programs, I remembered the ABC Lawsuit and I went back to look at the ABC complaint and I was like 'you know, we can dust this off and file something very similar today'. And so, we filed the first lawsuit in the country against the Trump administration and I modeled it after the ABC lawsuit that I had heard about so much about as a kid. And it was very very successful: after we filed the ABC type lawsuit here in [location hidden on purpose], our cases called '[name hidden on purpose] vs Trump' - because our main client is a community or organization called [name hidden on purpose] - and '[name hidden on purpose] vs Trump' was the first lawsuit to be filed to stop the federal government from canceling the immigration status of people with Temporary Protected Status - TPS. And I modeled that case after the ABC litigation that I had heard about when I was a kid. And so, that was really great to see that happen. And after that filing - which happened very very short late after President Trump took power, then we filed several other lawsuits here that in the following years, each time that the Trump administration would announce the cancellation of a program, we would immediately sue to stop the cancellation of a program.

Interviewer: That's amazing. Congratulations for your work. That's just incredible: what you guys do. And you were talking before about the previous governments - before Obama and Trump. Do you feel like the conditions inside detention centers were, let's say 'less worse', in administrations such as Bush or Clinton than they were in Obama and Trump? Or is it just a continuing awful treatment?

Interviewed: Yeah, I think it has just been a continuation of the same thing. You know, I would say that there are... I mean, conditions are just bad, and it's a general bad. Overtime, different things have changed a bit, like, I remember... One of the big things for example being access to HIV medicines in immigration detention - the centers, the facilities. It was a big point of contention, especially in the late 1990s and early 2000s when a lot of people in immigration detention facilities didn't have access to HIV medicines. And so, that became a major point of advocacy, and by the early 2000s, there was significant work to make sure that the facilities had HIV medical care treatment. And today, for the most part they do. And so, we have seen some examples of, like, improvements, right? There have been improvements over time. Like, the Obama administration was the one that helped to really cement HIV access. And then the other point which... So first it was the HIV - getting HIV medicines into the facilities - and then the other point became, later, the way that transgender people are treated. And there were a few really terrible stories that would come out, especially in the

2000s, about trans women being placed with men and being sexually assaulted. And so, that became another point of serious advocacy. So, at some point, we do have - towards the end of the Obama administration - more guidance and policies about the placement and treatment of transgender detainees. And so, we have had moments where I would say improvements were being made - the HIV and trans policies are examples of that, so I don't wanna make it seem like, you know, everything is always terrible; there has been gains, some gains, I would say limited gains, but important gains, nevertheless. And so, I wanna point to those gains, just in case of... You know, just to be complete. But definitely, I think, for the most part, the conditions have been bad, and it's been bad historically. Except that, on occasionally we have been able to get improvements.

Interviewer: Okay, okay. Thank you. I have just one more question. I don't want to take a lot of time from you, so this is the last one: I would just like to hear if you feel like Latin American immigrants are treated differently, in a worsen or maybe even in a better way, then immigrants from another location - from other countries? Or if you think the treatment is kinda the same for everyone.

Interviewed: You know, recently what we have heard a lot about is 'the Haitians', right? That the Haitians are not being treated... That they are being treated way worse. I think there are a couple of points there: one is that most of the Latin American people - obviously not the Brazilians and other people, but the ones that speak Spanish... So that has been helpful because the government, at this point, does have, for example, forms translated into Spanish. And so, it makes the process (when you are there and getting information) easier - easier than somebody who comes from Haiti or even someone who comes from Brazil, who would have a harder time because... I think... Forms and access to information is more readily available in Spanish than it is in many other languages. And so, that's a benefit that *Latino* immigrants have that, you know, for example, immigrants from India wouldn't have. That said, I think there is also... That's also... That's a double edge sword: could be helpful, but it... There are so many in terms of volume, so many people coming from places like Guatemala, Honduras, El Salvador, that the government has become desensitized to it. I actually hear this a lot: like, when there is a Brazilian at the border it's kinda like a big deal, you know? Because it takes a long time for someone from Brazil to get to the border, right? So, when there is a Brazilian at the border they think 'Oh! There is a Brazilian here' or 'There is an Indian person', and 'Oh! There is somebody from India!'. And so, those stand out even though the number of Brazilians have been steadily increasing - but that aside. That the idea of seeing a Mexican at the border... I mean, everyday! Right? And so, you get desensitized to it. And so, when you get desensitized to it, then it becomes easier to skip things that you should be doing (like doing a 'credible fear' interview, or whether this person should qualify for asylum or refugee status). But when you get somebody from India or Brazil, you are more likely to do that because it's not every day necessarily that you are interfacing with somebody from those nationalities. So there seems to be that, even though the volume has helped to create some infrastructure around translation or materials - having access to information in your language, it has also, I think, diluted the quality of the services because you are, instantly, being sort of as deportable. So, like, you are just one more person from Guatemala. You are deportable. And so, the idea that you need to appear in front of an immigration judge or that you need to be given the opportunity to apply for asylum, it gets diluted. And so, we get many, many reports of, especially, people from Central America who are just deported immediately without due process, without seeing a judge, without applying for asylum or even being told that they can apply for asylum. And so, the deportability of somebody from Latin America is

almost an assumption - a wrong assumption, but an assumption. And so, that happens especially with the people from Central America and Mexico. And so, you know, if being Latino is better or worse? I guess it is easier in some ways because you have access to information in your language, you know? If you are in a facility, there are people who speak your language, and they will give you information as well. If you get deported and you are from Mexico, you get deported over the border, you can try again and come back again, right? You could take multiple bites on the apple in a way that is easier. And so, there are, I guess, some advantages, or perceived advantages. But I think that that also comes from serious disadvantages: that you are assumed to be deportable and that there are less - even though it may be more infrastructure - legal protections that apply to you when you are from one of these countries like Mexico or from Central America. It is much harder to effectuate the deportation of a Brazilian, that you have to, you know, sent a flight to, you know, São Paulo, or Rio, or whatever; and so, it's much much more difficult to, when people from Brazil or people from India arrive at the border, it's much more difficult to remove them. And so, generally, they would get detained (again, unclear for how long, sometimes a few days, sometimes it could be months, but they would be detained) and after the detention, you know, you could get deported, sure; but I think many are not, because it's difficult to effectuate the deportation. And so, many people from countries that are not frequent sending countries (people from Brazil, from India, from Russia), they would come in and get processed, and get released into the United States because, from a logistical perspective, it's easier to do that than to try to send them back home. And so... I know this is not quite an easy answer that I'm giving, but it's just some of the... I think there are logistical issues that play a role here, but it is complex because it's layered with race, it's layered with language, just geography, right? Geography of having to send somebody back to Africa or to South America. And so, I think all of that is at play, but I can definitely say that, confidently - and that's based on speaking with dozens, and dozens, and dozens, and dozens of people not just in [location hidden of purpose] but at the border, it is clear that, if you are whiter or if you speak English, your process is accelerated and you have much better outcomes even within the bad conditions that we were talking about.

Interviewer: Yeah, that makes sense. Okay, thank you so much for your answers, [interviewed name hidden on purpose], and thank you so much for your time. I know it's not easy to just let it go for an hour of your work, so I really really appreciate your attention.

Interviewed: No, no, of course. And I'm sorry that I was so late. I'm happy that we can chat, and I hope it's helpful.