DEPORTATION
Without Due Process

The U.S. has used its "stipulated removal" program to deport more than 160,000 noncitizens without hearings before immigration judges

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Executive Summary

Over the past decade, the United States government has dramatically expanded its use of a program called "stipulated removal" that has allowed immigration officials to deport over 160,000 non-U.S. citizens without ever giving them their day in court. This report synthesizes information obtained from never-before-released U.S. government documents and data about stipulated removal that became available for analysis as a result of a lawsuit filed under the federal Freedom of Information Act (FOIA).[1] Many of these government records reveal that the stipulated removal program has been implemented across the U.S. at the expense of immigrants' due process rights.

According to the previously unreleased data, the federal government has used stipulated removal *primarily on noncitizens in immigration detention who lack lawyers and are facing deportation due to minor immigration violations.* These noncitizens were given a Hobson's choice: Accept a stipulated removal order and agree to your deportation, or stay in immigration detention to fight your case.

Government records obtained through FOIA litigation suggest that government officials offering stipulated removal to immigrant detainees routinely provided them with inaccurate, misleading, and confusing information about the law and removal process. For example, government agents overemphasized the length of time detainees would spend in detention if they chose to fight their cases and see a judge, yet failed to tell detainees that they could secure release from detention on bond while fighting their cases, or that some might win the right to remain legally in the country. In addition, detainees often had no chance to understand the consequences of signing a stipulated removal order due to systemic language barriers and the lack of quality interpretation and translation that are known to plague many immigration detention facilities.

The government documents reveal that immigration judges who sign off on stipulated removal orders have expressed serious concerns about whether the stipulated removal program comports with due process. In fact, some immigration judges have refused to sign stipulated removal orders without seeing detainees for brief, in-person hearings. These hearings at least provide immigration judges the opportunity to determine whether immigrant detainees in fact opted for stipulated removal on a voluntary, intelligent, and knowing basis—as required by the current internal rules governing stipulated removal.

The government documents summarized in this report present a dismal picture of the stipulated removal program—a program that, until recently, has operated with little public scrutiny. In September 2010, the Ninth Circuit

Court of Appeals shone a spotlight on the program when it issued its decision in *United States v. Ramos*, 623 F.3d 672 (9th Cir. 2010), a case addressing due process and regulatory violations inherent in the stipulated removal program. The documents analyzed for this report show that the *Ramos* case was not an aberration, but rather an example of the stipulated removal program's systemic and pervasive shortcomings.

In order to ensure that the stipulated removal program meets the minimum standards of due process and fairness, the federal government should implement the recommendations set forth in this report. These recommendations are geared towards ensuring that immigrants' due process rights and the rule of law are respected in immigration detention facilities and immigration courts throughout the country.

Summary of Recommendations

- The Executive Office for Immigration Review (EOIR), the subagency of the U.S. Department of Justice that oversees the immigration court system, should require immigration judges to hold brief, in-person hearings *before* signing off on stipulated removal orders for noncitizens who are not represented by attorneys. These should be individual hearings, similar in scope to plea colloquies in the criminal context.

- EOIR should expand access to counsel and legal information for noncitizen detainees, especially those whom the U.S. Department of Homeland Security (DHS) targets for stipulated removal. In detention facilities that offer legal rights presentations, U.S. Immigration and Customs Enforcement (ICE) agents should be barred from offering a detainee the option of a stipulated removal order until the person has had the opportunity to attend a legal rights presentation. ICE and EOIR should also require a 72-hour waiting period between when a detainee signs a stipulated removal order and when an immigration judge approves the order, to permit the detainee the opportunity to consult with an attorney. ICE should give detainees notice of this 72-hour period and provide them a list of local no-cost or low-cost legal service providers prior to obtaining their signature on a stipulated removal order.

- DHS should develop and institute training that is specifically aimed at preventing coercion and manipulation by ICE or U.S. Customs and Border Protection (CBP) agents in the stipulated removal process.

- DHS should ensure that language barriers do not jeopardize the integrity of the stipulated removal process. Stipulated removal forms must be competently translated into multiple languages, and detainees who do not speak English well should never be offered a stipulated removal without

a qualified interpreter being present to help them understand exactly what they would be accepting if they signed the form.

- If any immigration judge in a given district raises concerns about the local process for offering stipulated removal to noncitizens, the chief immigration judge in that district should place a moratorium on the use of stipulated removals in that district until the chief judge and his/her counterpart at ICE headquarters have resolved the concerns that have arisen in the district.

- ICE should be prohibited from using stipulated removal on vulnerable noncitizens and those with strong ties to the U.S. These include, at a minimum, children, people with mental disabilities, and lawful permanent residents.

- ICE should inform the public when it intends to use stipulated removal in a particular jurisdiction.

- ICE should publish statistics on its use of stipulated removal, at both the national and local levels, on an annual basis.

- Detainees (or their representatives) who call EOIR's toll-free (800) number for information about their immigration cases should be told whether or not they have signed a stipulated order of removal request.

- Instead of expanding stipulated removal, Congress and ICE should halt the expansion of immigration detention, provide for more alternatives to detention, and consider developing broader solutions to the nation's broken immigration system.

Deportation Without Due Process

Introduction

In the past decade, the United States government has used a program called "stipulated removal" to deport more than 160,000 non-U.S. citizens, despite the fact that these individuals never had their day in court. Immigrants who sign stipulated removal orders give up their right to a hearing before an immigration judge and agree to have a formal removal order entered against them, even if they may be eligible to remain in the U.S. According to U.S. Immigration and Customs Enforcement (ICE), almost *one-third* of *all* removal orders obtained by ICE in fiscal year 2008 were stipulated removal orders.[2]

Large Program but Hardly Any Information about It. Despite the size of the program, little has been known about the manner in which the government administers stipulated removals. Prompted by the lack of public information and concerns about whether the program comports with fundamental due process standards, the National Immigration Law Center (NILC) and the Stanford Law School Immigrants' Rights Clinic filed a lawsuit under the Freedom of Information Act (FOIA) on behalf of plaintiffs NILC, the American Civil Liberties Union of Southern California, and the National Lawyers Guild San Francisco Chapter. As a result of this lawsuit, the U.S. Department of Homeland Security (DHS) and U.S. Department of Justice released over 20,000 pages of internal records related to stipulated removal.[3]

These records provide the first comprehensive insight into a largely hidden program. The information received through the lawsuit reveals widespread and substantial problems with the stipulated removal program. The vast majority of noncitizens removed through stipulated removal, 96 percent, did not have lawyers. Almost all noncitizens who agreed to stipulated removal did so when they were being held in immigration detention facilities, where detainees usually are far from family and friends and where they routinely lack access to accurate legal information about their rights. In addition, the vast majority of the charges against individuals deported under stipulated removal—80 percent—were based on purely civil violations. The government has continued using stipulated removal against this population, despite the fact that the Obama administration has claimed that nonviolent undocumented immigrants are not an enforcement priority.[4]

Concerns about Due Process and the Rule of Law. The expansion of stipulated removal raises serious due process and rule of law–related concerns. The released government documents reveal that immigration judges around the country have encountered noncitizens who did not understand the

consequences of signing these orders or whether they were eligible for relief from removal. This is contrary to the government's own rules, which require that immigration judges find that noncitizens who signed stipulated removal orders did so knowingly, voluntarily, and intelligently. According to one of the government documents, at least one immigration judge "has determined that the waiver is not knowing in almost all occasions," and that the judge's "experience has been, in unrepresented cases, that the alien is told that if he wants [to] get out of jail he should sign this paper."[5] Worse, immigrants have reported being coerced to sign stipulated orders of removal or being pressured to accept stipulated removal as a way to get out of immigration detention. The documents also make clear that the federal government views stipulated removal as a way of quickly increasing its deportation numbers, while alleviating the need for additional bed space in immigration detention centers.

One immigration judge "has determined that the waiver is not knowing in almost all occasions," and that the judge's "experience has been, in unrepresented cases, that the alien is told that if he wants [to] get out of jail he should sign this paper."

— Email from A. Greer to EOIR Officials, re: Another Inquiry About Stipulated Removal Orders (June 15, 2006) (EOIR-2008-5140(8)-000084-87).

The government's drive to make stipulated removals faster and more efficient has come at a high cost. A substantial share of immigrants targeted for stipulated removal may have claims to remain in the U.S. lawfully based on a variety of factors, including the length of their presence here, their family ties to the U.S., their status as crime victims, or their fear of being persecuted or tortured if they are returned to their home country. The law may allow them to be released on bond, especially if they do not have criminal records. But from the confines of immigration detention, it is difficult, and often impossible, for them to obtain accurate information about their options, largely because ICE fails to provide them with such information—and at times even gives them incorrect information about the law. Records from the lawsuit further suggest that ICE has allowed language barriers to prevent many noncitizens from fully understanding what it means to accept a stipulated removal order.[6]

Noncitizens with Few Resources Targeted. As this report shows, the federal government has expanded the use of stipulated removal throughout the country, at the expense of the due process rights of immigrants and adherence to the rule of law. Stipulated removal has been used largely on immigrants with very few resources—detained immigrants without lawyers who are facing deportation due to minor immigration violations. These immigrants' lack of access to lawyers makes them particularly dependent on the government for information about stipulated removal. But ICE officials appear to have routinely given misleading, confusing, and downright inaccurate information to detainees about the law. Based on their experience with stipulated removal, several immigration judges—who must formally approve all stipulated removal orders before they have legal effect—have expressed serious misgivings

about the program. Not surprisingly, stipulated removal has deeply affected immigrants of color, particularly those from Mexico and Latin American countries. Furthermore, language barriers have plagued the stipulated removal process and made it difficult, if not impossible, for immigrants to understand the rights they are giving up.

The federal government should institute various safeguards to prevent the abuses associated with stipulated removal, such as requiring immigration judges to hold brief, in-person hearings before approving stipulated removal orders and increasing detained immigrants' access to legal representation and information. It should institute better training and guidelines for ICE and U.S. Customs and Border Protection (CBP) agents tasked with approaching immigrants about stipulated removal and provide more public information about the program. To date, it has failed to undertake such measures. Before continuing the program, the federal government should reconsider its use of stipulated removal and institute the recommendations set forth in this report.

The Federal Government Has Expanded Use of Stipulated Removal Over the Past Decade, at the Expense of Immigrants' Due Process Rights

Over the last several years, the federal government has broadly expanded its use of stipulated removal, with disturbing consequences. It has implemented this expansion by encouraging actors at every level to increase the use of stipulated removal and by creating powerful incentives for the use of stipulated removal. Top-ranking ICE officials have encouraged—and even mandated—the use of stipulated removal against immigrant detainees in as many situations as possible. ICE officials at the local level have been given incentives to increase the number of stipulated removals entered. Immigration judges, too, have been encouraged to use stipulated removal as a way to alleviate their extraordinarily high caseloads. Supervisory officials within

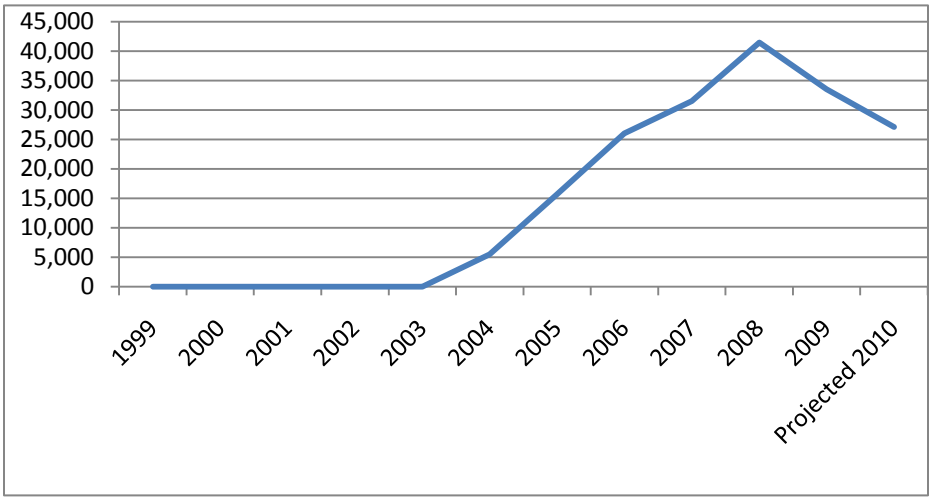


FIGURE 1
Stipulated Orders of Removal, by Year

ICE have directed their supervisees to use stipulated removal even at the expense of errors, miscommunication, and outright harm to the noncitizens deported through the program.

Internal DHS memoranda reveal that, since 1997, the federal government has encouraged—and even mandated—the use of stipulated removal.[7] In the past seven years in particular, DHS has instructed its local field offices to aggressively use stipulated removal on as many noncitizens as possible.[8] And the directive to expand the use of stipulated removal orders came from the highest levels, including from the former director of ICE's Detention and Removal Office and the former director of ICE.[9]

Government Encourages Stipulated Removal, Even When Less Drastic Options Are Available. The federal government has expanded stipulated removal through the use of internal incentives, with several disturbing consequences.

"As you well know, [voluntary returns] do not count for statistics and let's face it I would prefer a bigger BANG for our tax dollars that we will invest during this operation."

—Email message to T. Bird, ICE chief counsel, Atlanta, in response to a question about use of stipulated removal (ICE-08-1450(4)-000142).

First, many local ICE offices and local immigration courts have been encouraged, and given incentives, to increase the number of stipulated removals entered against noncitizens in their jurisdictions.[10] Many ICE officials know that noncitizens may be eligible for "voluntary departure" or "voluntary return," in which they agree to return to their home country without suffering the legal penalty of having a formal removal order entered against them.[11] For a noncitizen, the legal consequences of receiving a stipulated order of removal, in comparison to accepting voluntary departure or voluntary return, are significant: Receiving a stipulated removal order, like receiving any other formal removal order, means that the recipient is barred from reentering the country legally (generally for ten years);[12] if the individual *does* return to the U.S. without permission, then heightened civil and criminal penalties may apply because of the prior removal order.[13] Voluntary return or departure, however, is an immigration benefit that does not trigger these bars to reentering the country legally in the future nor does it subject individuals to heightened criminal penalties.

Second, despite the availability of programs such as voluntary departure and voluntary return for many noncitizens in immigration detention, it appears that government officials have allowed concern for statistical quotas to drive their use of stipulated removal. One official in Atlanta, Georgia (where, according to the Executive Office for Immigration Review, or EOIR, data, over 8,000 stipulated removal orders have been entered since the inception of the program), inquired about the possibility of using voluntary return instead of stipulated removal but received the following response from another official: "As you well know, VRs [voluntary returns] do not count for statistics and[,] let's face it[,] I would prefer a bigger BANG for our tax dollars that we will invest during this operation."[14] Similarly, one ICE offi-

cial in El Paso, Texas, encouraged the use of stipulated removals in the region to maintain field office director ratings, noting that the program was an "essential staple in [reducing] the average length of aliens in our custody," which is an "element my FOD [field office director] is rated on."[15] Yet another office noted, in an email message, that the "FOD would like for us to offer Stipulated Removals for all those cases currently being offered VRs," and directed recipients of the message to "establish a weekly count."[16]

Similarly, other documents demonstrate that individual ICE offices have been assigned monthly stipulated removal quotas[17] and that specific ICE employees may have been recognized within their departments for their efforts to increase the number of stipulated removal orders.[18] At least one office has even suggested providing "an award specifically for stip cases."[19]

Third, other records suggest that immigration judges are given "case completion" credit for stipulated removals as if they had completed a regular court hearing, thereby providing an incentive for them to sign stipulated removals as quickly as possible in order to claim higher individual case closures and manage their extraordinarily high caseloads.[20] One court administrator stated that "it would be devastating" to stop doing stipulated removals, because the court "has only been able to get by on its detained docket and stay true to case completion goals because we do so many [stipulated removals,] which don't clog up the dockets."[21]

Expansion Has Been Speedy and on the Cheap. In addition, there is evidence that the federal government has been willing to quickly and cheaply expand the use of stipulated removal. But the speed and lack of process appears to have resulted in mistakes, miscommunication, and immigrants giving up rights that they did not know they had. One official noted that "it is very important for . . . agents to push for [stipulated removals]" and that most lawful permanent residents are "willing to take an order just to get out of jail sooner (that is[,] until the judge encourages them to get a lawyer)."[22] In the San Francisco Office of Chief Counsel, government lawyers tasked with reviewing requests for stipulated removals were instructed to spend no more than seven or eight minutes per file before presenting them to an immigration judge for signature, in cases where noncitizens were detained and did not have lawyers.[23]

> *"Please, please, please . . . encourage the agents to work harder on the stipulated orders of removal. . . . It is really important for the agents to push for stipulated orders of removal. . . . Most of the [lawful permanent residents] who get out of jail are willing to take an order just to get out of jail sooner (that is until the judge encourages them to get a lawyer)."*
>
> *—Email message from M. Meymarian to various recipients (Apr. 22, 2004) (ICE.08-1450(13).000159).*

Finally, the federal government also has made an effort to increase its use of stipulated removal orders in local county jails and to involve local law enforcement officers in stipulated removal.[24] Other records show that ICE is

seeking to expand stipulated removal for noncitizens in state and county jails.[25]

Released Documents Present Bleak Overall Picture. Our review of the over 20,000 pages of previously unreleased government documents presented a bleak picture of the stipulated removal program nationwide. The federal government has worked to expand its use, irrespective of the legal claims that the noncitizens targeted for stipulated removal may have. In at least some areas, statistical quotas appear to have driven the increase in stipulated removal. In immigration courts, judges with already staggering caseloads have been told that stipulated removal will result in case completion credit.

The stipulated removal program is, simply put, one that is content to cut corners and that all too often has been applied without regard to the facts and circumstances of individual immigrants to whom it is applied. Given the manner in which stipulated removal has been implemented, it seems all the more important for immigrants targeted for stipulated removal to have the benefit of clear, accurate advice from someone who knows the law and does not have a vested interest in increasing the number of stipulated removals obtained.

"[F]ifteen minutes is way too long. Cut that in half."

—Email from supervisory attorney, J. Stolley, in ICE Office of Chief Counsel, San Francisco, to DHS trial attorneys responsible for reviewing requests for stipulated removal orders before presenting them to immigration judges for signature, Re: Review of Stipulated Removals (Nov. 8, 2006) (ICE.08-1450(11).000481).

"Encourage to stip away!"

—Email from redacted sender to redacted recipients, Re: Stipulated Removals (Nov. 2, 2006) (ICE-08-1450(3).000262).

Stipulated Removal Is Used Primarily on Immigrants Who Are Detained, Who Do Not Have Lawyers, and Who Face Deportation Due to Minor Immigration Violations

The vast majority of people who accept stipulated removal are behind bars, in immigration detention. The intimate link between stipulated removal and immigration detention is particularly troubling. The federal government sees stipulated removal as a quick solution to free up bed space in its detention facilities,[26] even though other viable community-based alternatives to detention exist. Moreover, the noncitizens targeted for stipulated removal do not appear to pose an immediate threat to public safety or American society; in fact, some may have claims to relief or to release on bond. But because they were detained, overwhelming numbers of noncitizens who "chose" stipulated removal did not have lawyers to advise them about their legal options to remain in the U.S. Under these conditions, many noncitizens may not be accepting stipulated removals voluntarily, and instead may have had little choice but to accept whatever the government offered. Furthermore, the documents obtained through the FOIA lawsuit suggest that ICE agents are not barred from using stipulated removal on

vulnerable segments of the detainee population, such as mentally ill detainees and juveniles.

The government's own rules require that noncitizens who sign stipulated removal orders do so voluntarily, intelligently, and knowingly. But very few detainees have access to counsel or an understanding of their legal rights and options. Given these limitations, it is unlikely that the noncitizens who sign stipulated removal orders do so voluntarily, intelligently, and knowingly.

Detained Individuals Are Primary Targets. Most stipulated removals have been ordered in a handful of places in the U.S. and primarily in locations with large detention centers (figure 2). The federal government views stipulated removal as a cost-effective, quick way to increase its deportation numbers, while also responding to limitations on available detention bed

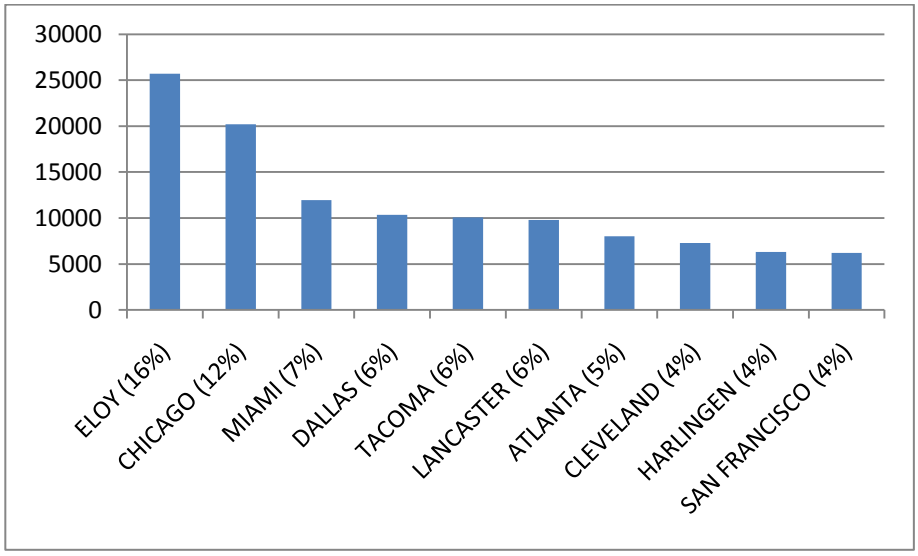
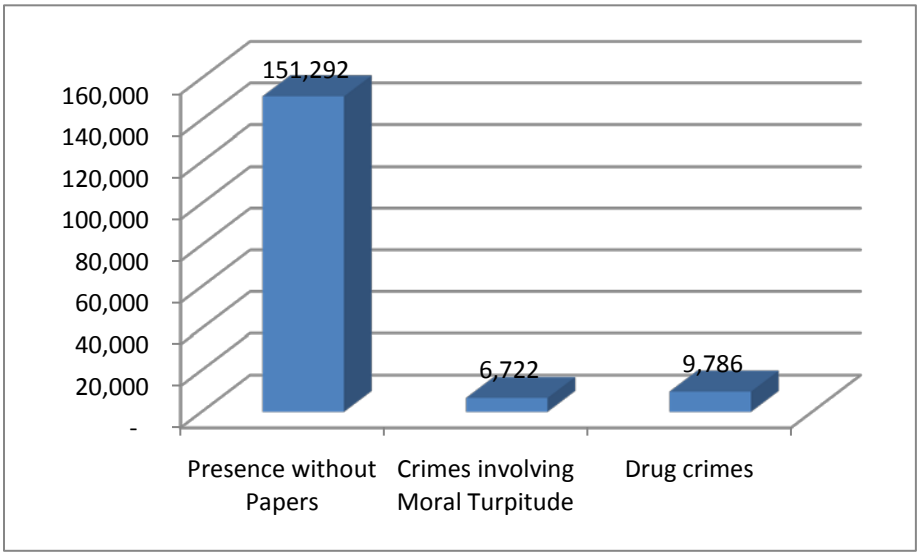


FIGURE 2
Locations Where Stipulated Removals Have Been Ordered, since 2004

space. But quick, easy deportations are not the only option available to the government. Viable alternatives to detention, including community-based alternatives, exist.[27] The conditions of confinement that noncitizens in immigration detention face are inherently coercive, as they often fail to meet even the minimum standards for detention.[28] Even though ICE could address any concerns about freeing up detention space or overcrowding by vigorously pursuing these community-based alternatives to detention, it has responded, instead, by using stipulated removal to simply deport noncitizen detainees while bypassing the proper legal process.[29]

Most Individuals Targeted Pose No Danger; Many May Be Eligible for Relief. The majority of the federal government's charges against noncitizens who accepted stipulated removal were for the civil immigration violation of being in the U.S. without the appropriate papers (80%) (figure 3). The government put these individuals in removal proceedings because they lacked immigration documentation, not because of any criminal history. They continue to be detained because they are waiting for their cases to be

FIGURE 3
Charges on Which Stipulated Removal Orders Were Based, since 2004



decided by immigration judges. In a number of jurisdictions, ICE has been instructed to use stipulated removal on individuals who are detained solely because they are in the country without papers.[30] A 2010 decision out of the Ninth Circuit highlighted the government's stipulated removal practices in Eloy, Arizona, and confirmed that many subjects of stipulated removal do not have a criminal history.[31]

In fact, substantial numbers of immigrants asked to sign stipulated removal orders may in fact be eligible for relief under the law. The immigration laws do not bar individuals who are in the U.S. unlawfully from applying for asylum or other forms of immigration relief, including relief based on relationships to family members or status as a crime victim. Noncitizen detainees may also be eligible to ask that an immigration judge release them from detention on bond while their cases are pending.

Relatively Few Selected Individuals Are Informed of Their Rights. However, unless they are represented by an attorney, most noncitizens selected for stipulated removal may not know whether they have a claim to relief or could be released on bond. The overwhelming majority of noncitizens selected for stipulated removal—nearly 96 percent—did not have lawyers[32] (figure 4). A recent study found that, across the country, nearly 10 percent of all detention facilities provide no or limited access to know-your-rights presentations, which provide the only form of legal information most detainees are able to receive.[33] Although the U.S. government "spent $5.9 billion to detain immigrants in fiscal year 2009, it spent less than 0.07% of that amount to provide detainees with legal rights information."[34] Even in detention facilities that do offer know-your-legal-rights presentations, many noncitizens never receive individualized assessments of their cases.[35] In some detention facilities where stipulated removals are commonly offered, detainees are not able to attend available know-your-rights presentations before being offered stipulated removal. This lack of basic legal information is

compounded by the persistent limitations on communicating with their attorneys (or with attorneys who could potentially represent them) by phone that detainees commonly face.[36] Because so many noncitizens targeted for stipulated removal do not have lawyers or basic legal information, they have no way of knowing their legal options. As a result, their waiver of their right to go to court cannot be considered to be knowing, voluntary, and intelligent, as required by the government's own internal guidelines and by due process.

Officials within EOIR have recognized that many noncitizens are approached to sign stipulated removal orders without ever having access to legal information, much less legal counsel. In March 2006, an internal EOIR memorandum recommended providing legal rights presentations that would be specifically geared towards detainees who are candidates for stipulated removal.[37] However, despite the numerous problems with the stipulated removal process, EOIR does not appear to have finalized these recommendations.

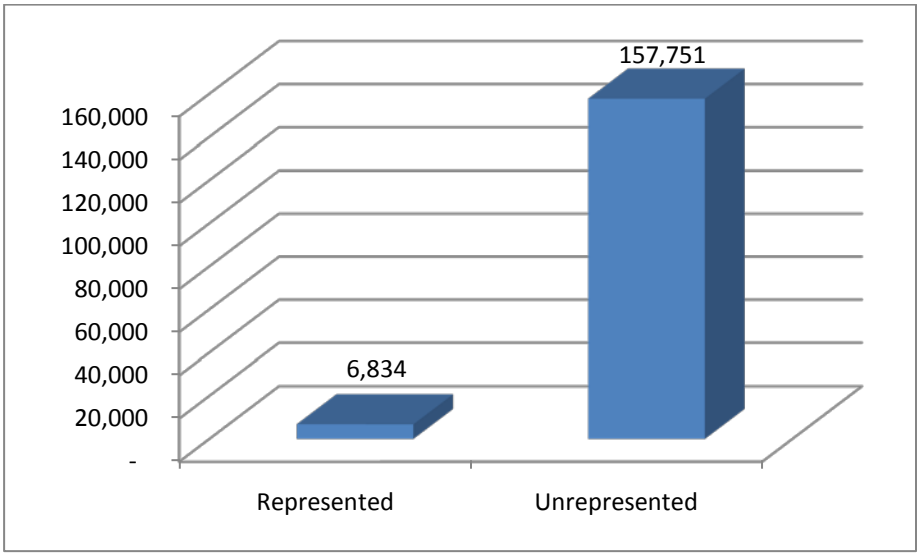


FIGURE 4
Number of Stipulated Removal Orders Whose Subjects Had Legal Representation, since 2004

The Most Vulnerable Have Been Affected. Nothing in the stipulated removal regulations stops the government from using this form of deportation against the most vulnerable of noncitizens in detention, despite the fact that ICE has been directed not to detain vulnerable populations.[38] Government records suggest that ICE may even have used stipulated removal on children, despite the fact that they should not be considered able to make a voluntary waiver of critical rights, such as a right to a day in court.[39] Another released document suggests that noncitizens detained in mental institutions in the Baltimore, Maryland, area have been targeted for stipulated removal.[40] And one particularly disturbing internal email suggests that the government even attempted to use stipulated removal in a case involving a "paraplegic with bed sore problems," instead of questioning whether his detention was necessary in the first place.[41]

The Government Has Provided Inaccurate, Misleading, and Confusing Information to Immigrant Detainees Targeted for Stipulated Removal

Most noncitizens targeted for stipulated removal do not have access to lawyers and come from Spanish-speaking countries. But government records suggest that many ICE officers are giving immigrant detainees poorly translated, misleading, and even false information about their cases and the consequences of signing a stipulated removal order. It is not surprising that some government officials have observed that being tricked into signing the "stip" is a "not uncommon allegation in reentry cases." According to one official, "a small minority [of ICE agents] either don't care whether they get it right or intentionally mislead the aliens as to what their rights are."[42]

> *"If you're going to fight your case, there are only three ways to defend yourself. 1) If you are* legally married to a person *who is a resident or citizen. 2) If your* parents *are residents or citizens. 3) Lastly, any* brother or sister *who is a resident or citizen.*
> Only these three groups can make an application to fix their papers!
> *If you do not have one of these ways to defend yourself, then it will be very difficult for you to fix your immigration status in the United States. You are completely within your right to see the judge but I want you to be aware that this process will take from* 6 months to 3 years.*"*
>
> *—"Stips Presentation (Spanish)" (ICE-08-1450(6)-000066) (2-page script produced by ICE; translated from the Spanish by Richard Irwin).*

ICE Scripts Provide Incorrect and Incomplete Information. A particularly troubling document obtained through the FOIA litigation is a two-page script, apparently used by ICE officers, to explain stipulated removal. The script is written in broken Spanish, replete with condescending and misleading phrases. It contains incorrect and incomplete legal information, but appears to have been used by ICE officers in Southern California and possibly throughout the country.[43] Unfortunately, for many immigrant detainees, the *only* information they receive about stipulated removal has been from ICE officers who use seriously flawed scripts such as this one. It states, for instance, that the "only" way for detainees to "fix [their] papers" is through certain family relationships—an incorrect statement as a matter of law, since some detainees may qualify for relief through other avenues, such as being a victim of a crime or fearing persecution or torture in their home country. Furthermore, some of the family relationships that this script does mention as routes to potential legal relief are flatly wrong.[44]

The script openly discourages noncitizens with certain criminal charges from even asking for bond and provides false information about their legal rights to seek bond and be released. For instance, the script states that if a

person has "any charge related to drugs, any charge . . . related to hitting another person like assault or battery, [or] any charge that is a felony resulting in a sentence of 180 days or more," he or she will be "automatically disqualif[ied]" from receiving bond—and that "it is most probable that you will be denied."[45]

The ICE script goes on to state that if the noncitizen wants to see a judge, the process will take "from 6 months to 3 years," which not only overstates the wait time in many locations but also conveys a clear intent to deter individuals from seeking their day in court. The script further advises noncitizens that, with stipulated removal, the "big difference in the process is that it "eliminates/cuts the time in half"—a statement presumably intended to refer to the length of detention individuals might expect to face if they attempted to fight their case or requested voluntary departure from an immigration judge. But the script mentions nothing about the fact that receiving a stipulated removal order can subject the noncitizen to severe civil and criminal penalties in the future. These penalties include being barred from reentering the U.S. legally in the future and being subject to criminal prosecution for illegal reentry. Nor does the script mention that those same noncitizens might be eligible for an alternative outcome such as voluntary departure, which would enable them to leave the U.S. without prolonging their detention and without incurring the civil and criminal liabilities associated with stipulated removal.

> *"Now that you know that it will take one month to see the judge, the process that I do is called* Stipulated Deportation . . . . *The big difference in this process is that it eliminates/cuts the time in half. . . . [I]f you're from Mexico then it will take from* 5 to 10 days *and you will never go in front of a judge[.] [T]he paperwork is just done here and you sign and the judge verifies that everything is in line and you'll be on your way to Mexico!"*
>
> *—"Stips Presentation (Spanish)" (ICE-08-1450(6)-000066) (translated from the Spanish by Richard Irwin).*

Another informal Spanish-language script provided by several ICE offices throughout the country is less egregious but still suggests that ICE officers have been routinely providing incomplete information about the removal process. It notes that voluntary departure is "not the same as deportation," that it is "not guaranteed," and that "there is a wait of ten or more days for this court."[46] However, this document does not mention at all the possibility of release from detention on bond, instead painting stipulated removal or voluntary departure as the only available alternative to continued detention.

Poor Training and Lack of Appropriate Guidance by ICE. Internal documents further suggest that ICE officers are poorly trained regarding stipulated removal.[47] ICE is fully aware that some of the noncitizens who are given stipulated removals might be eligible for relief from deportation.[48] Nevertheless, in at least some jurisdictions ICE officers refrain from providing noncitizens with information about their eligibility for relief.[49] Similarly, the documents released as the result of the FOIA litigation reveal that, in at

least some cities, ICE attorneys (who usually review stipulated removal orders on behalf of ICE before presenting them to immigration judges) have presented stipulated removal requests to the immigration judges even if they knew that a noncitizen was eligible for certain forms of relief from deportation.[50]

In addition, the documents show that the federal government has occasionally advised its officers not to coerce immigrants into signing stipulated removals, which suggests that it is well aware of the potential for abuse and coercion.[51] Nevertheless, DHS has neither issued national guidance nor implemented formal procedures to ensure that officers refrain from engaging in coercive tactics.

Several Immigration Judges Across the Country Have Expressed Serious Misgivings About Stipulated Removal

"As stated above, the judge has determined that the waiver is not knowing in almost all occasions. Our experience has been, in unrepresented cases, that the alien is told that if he wants go [sic] get out of jail he should sign this paper."

—Email from immigration judge to EOIR Officials, re: Another Inquiry About Stipulated Removal Orders (June 15, 2006) (EOIR-2008-5140(8)-000084-87).

Despite ICE's efforts to deport large numbers of immigrants via stipulated removal, a number of immigration judges around the country have expressed serious misgivings about the program. Immigration judges have a keen vantage point on stipulated removals because, in order for a stipulated removal order to be entered, an immigration judge must sign it. EOIR's own rules state that before an immigration judge signs a stipulated removal order, the judge must determine that the noncitizen's waiver of rights was "voluntary, intelligent, and knowing."[52] However, the government documents reveal that a number of immigration judges do not believe it is possible to fulfill their obligations under the law without holding an in-person hearing, and they have required such hearings before signing stipulated removal orders.[53]

Unrepresented Noncitizens Are Heavily Reliant on Immigration Judges to Ensure Fairness. For the majority of detained noncitizens, who are far away from their friends and communities, the only real assessment of their legal claims occurs in immigration court, before an immigration judge. Immigration court hearings give immigration judges an opportunity to advise noncitizens about their eligibility for relief and their rights, such as their right to hire an attorney or examine the evidence against them. In recognition of this fact, federal regulations require immigration judges to inform immigrants of their rights to apply for relief from removal.[54]

As one immigration judge, describing his concerns about stipulated removal, said, "The major weakness I see is that we are essentially handing over to ICE the duty of determining whether an alien has relief available. . . . In reality, ICE has very significant leverage over a pro se detained alien. I believe EOIR was created as a safety measure to insure fairness."[55] Indeed,

recent data obtained through a different FOIA request confirms that immigration judges often overrule ICE deportation decisions: In the last three months of fiscal year 2010, nearly *one in three* cases brought by ICE before the immigration courts ultimately was rejected by an immigration judge.[56] Against this backdrop, it is all the more critical that immigrants who forgo their right to appear before an immigration judge are making this waiver knowingly.

Judges and EOIR Officials Know the Program's Shortcomings. Internal government records show that immigration judges often have witnessed problems with stipulated removal, including cases in which noncitizens have signed stipulated removal orders without fully understanding the legal consequences of the stipulation.[57] In fact, one internal email noted that at least one judge "*has determined that the waiver is not knowing in almost all occasions*" and that judges' "experience has been, in unrepresented cases, that the alien is told that if he wants [to] get out of jail he should sign this paper."[58]

Senior EOIR officials have acknowledged similar concerns. One official noted that "it seems oxymoronic that an IJ who has no contact with the alien (other than taking notice of a signature) can make a reasoned determination that an alien knowingly, intelligently and voluntarily agrees to a stipulated removal."[59] As a result of these inherent process problems, some immigration judges either refuse to sign stipulated removal orders or, as a condition of signing them, require that the noncitizen signers first appear before them in court.[60]

"[I]t seems oxymoronic that an IJ who has no contact with the alien (other than taking notice of a signature) can make a reasoned determination that an alien knowingly, intelligently and voluntarily agrees to a stipulated removal."

—Email from B. Gibson, EOIR Legal Access Counsel, to S. Lang, EOIR Associate General Counsel, re: Stipulated Orders (July 7, 2005) (EOIR-2008-5140(2)-000075).

ICE's Response: Ignore or Circumvent Conscientious Judges. Instead of responding constructively to these immigration judges' due process–related concerns about stipulated removal, ICE has reacted by funneling stipulated removal orders away from those judges to other judges who will sign off on stipulated removal orders without questioning them. ICE has ignored immigration judges' expressed concerns despite the fact that, when the federal government changed its rules to allow stipulated removal without a hearing, it specifically noted that if an immigration judge had a question about whether due process had been satisfied, the judge could hold an in-person hearing.[61]

But ICE has disregarded certain immigration judges' desire to hold such hearings. Rather than allow these judges to hold in-person hearings to evaluate whether a noncitizen fully understood the effect of a stipulated removal order before signing it, ICE personnel, with EOIR's cooperation, in some jurisdictions appear to have presented stipulated removal orders only to those immigration judges who they knew would sign off on the orders without

holding a hearing.[62] In the past decade, according to EOIR's own data, over 100,000 of the almost 160,000 stipulated removal orders entered were signed by only 20 immigration judges across the country. One immigration judge in Miami, Florida, has signed nearly 10,000 stipulated removal orders in just over three years.[63]

"The [stipulated removal] program is allowed by regulation, but it is implemented by personal relationships. The reality is that we are asking the IJ (AND THE ACC [Assistant Chief Counsel]!!) to rely on a non-attorney to accurately discharge the legal requirements and also to be honest—after all it would be really easy to trick an illiterate non-English speaker into signing a request for a stip order"

—Description of stipulated removal program in Memphis, TN, ICE.08-1450(13).000236-37.

Top ICE officials are well aware of this practice. For instance, in January 2006, an email from the ICE chief counsel for the Phoenix, Arizona, region to ICE's principal legal advisor noted that one immigration judge in Eloy, Arizona, insisted on holding in-person appearances for stipulated removal orders and that, as a result, ICE personnel do not send him stipulated removal orders. The chief counsel wrote, "[T]he bottom line is that the stipulated program at Eloy works very well without him" (i.e., that particular immigration judge). "With the cooperation of 3 of the 4 immigration judges at Eloy," she continued, "the statistics . . . demonstrate that we're doing a booming stipulated removal business."[64]

"I can't imagine how an [immigration judge] could find that a pro se alien in detention (generally unsophisticated, ignorant, non-English speaking, gang-banging dirtbags) could make a '. . . voluntary, knowing, and intelligent . . .' request for a stipulated removal."

—Email from Eloy, AZ, court administrator, in response to summary of meeting between DHS and DOJ concerning requirements for immigration judges to sign stipulated removal orders, EOIR-2008-4150(4) 174-75, May 21, 2009.

Recent Policies and Procedures Memo Sends the Wrong Message to Immigration Judges. On September 15, 2010, Chief Immigration Judge Brian O'Leary issued Operating Policies and Procedures Memorandum (OPPM) 10-01: Procedures for Handling Requests for a Stipulated Removal Order,[65] which includes a standard request for a stipulated removal order and waiver of hearing that ICE plans to use nationwide. The stated goal of the OPPM and standardized request and waiver is to "promote uniformity in" EOIR's procedures for processing stipulated removal orders.

But the templates provided by EOIR and ICE send the wrong message to immigration judges: that they can sign stipulated removal orders based on nothing but ICE's paperwork and assurances, without necessarily providing

in-person, individualized hearings to determine whether noncitizens understand the effects of signing a stipulated removal order. In fact, one of the standardized forms provided with the OPPM would, if signed by a noncitizen to whom it was presented, automatically waive the person's right to a hearing before an immigration judge. Further, despite the extensive concerns expressed by immigration judges about the use of stipulated removal across the country, records released through the FOIA lawsuit suggest that EOIR's and ICE's efforts to develop the OPPM and the forms have been more focused on developing means of protecting ICE from legal liability than on addressing the concerns raised by the country's most conscientious immigration judges.[66]

Language Barriers Have Plagued the Stipulated Removal Program

Most individuals targeted for stipulated removal are from Mexico or other Spanish-speaking countries, so that racial and ethnic minorities bear the heaviest brunt of stipulated removal (figure 5). Despite the strong likelihood that many noncitizens targeted for stipulated removal do not speak English fluently, the federal government has failed to establish clear protocols to ensure that language barriers do not plague the stipulated removal process.

A deportation officer attached to the Eloy, Arizona, detention center—the leading source of stipulated removal orders in the country—recently testi-

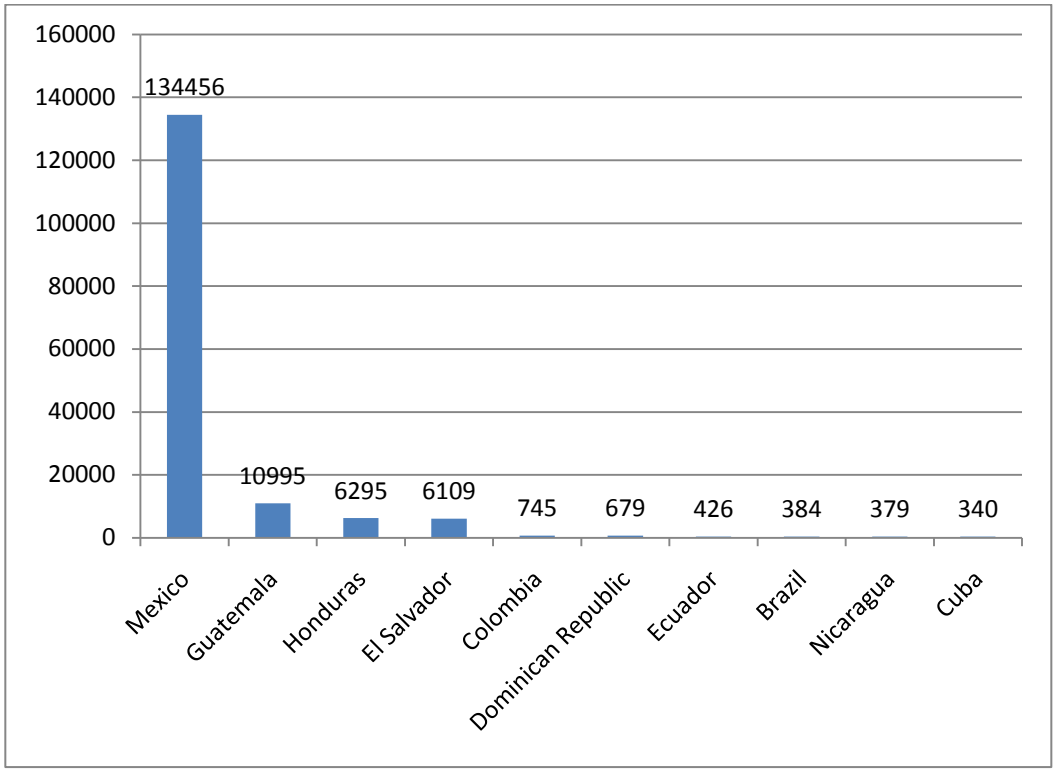


FIGURE 5
Number of Individuals Ordered Removed Since 2004 under the Stipulated Removal Program, by Country

fied in federal court that she would conduct meetings with Spanish-speaking detainees and ask them if they wished to accept stipulated removal, even though she is "not fluent in Spanish" and her "Spanish language education [is] limited to 'several classes' during her training with DHS's Bureau of Immigration and Customs Enforcement." When encountering detainees who spoke Spanish, this officer testified, she would ask them a question, in her broken Spanish, that she believed translated to "Do you want to fight your case, or do you want to sign?"—a question that an official court interpreter stated was "nonsensical" and not capable of proper translation.[67]

Government documents bear out these concerns about lack of adequate language interpretation and translation in the stipulated removal process. In July 2008, one immigration judge in Oakdale, Louisiana, expressed concern about starting a stipulated removal program because "[t]he [ICE] officers here are not native Spanish speakers[,] and our primary concern was if they could effectively communicate with the alien." The judge went on to state, "Having seen this proficiency up close[,] I'm still not sure their Spanish is sufficient to communicate to the degree necessary for a stipulated removal."[68] And at least some ICE officials are fully aware that stipulated removal can be abused due to language barriers. As one ICE official in Memphis, Tennessee, said, "[I]t would be really easy to trick an illiterate non-English speaker into signing a request for a stip order."[69]

Simply put, ICE and EOIR must do more to ensure that competent translation and interpretation are provided if they wish to continue the stipulated order of removal program. ICE should not be permitted to use informal Spanish-language scripts or rely on ICE officers who are not fluent in Spanish to offer stipulated removal to Spanish-speakers who can't understand an explanation provided in English. Unless it institutes these fundamental changes, ICE cannot be sure that detainees signing stipulated removal orders fully understand what they have agreed to give up.

Conclusion

Although the stipulated order of removal program expanded most aggressively during the George W. Bush administration, it appears that the Obama administration continues to use the program broadly. The government's own records indicate that stipulated removal is seriously flawed—that it is used by ICE to quickly deport noncitizens who do not have lawyers and are being detained by immigration authorities solely because they lack immigration papers. The government appears to see stipulated removal as a way to increase its deportation numbers and to alleviate demand for detention bed space. Internal records suggest that the noncitizens who are targeted for stipulated removal are routinely given incorrect or incomplete information about their cases and that immigration judges' concerns about the practice are being blatantly ignored and, in some cases, circumvented. The federal

government should reevaluate its use of stipulated removal and immediately implement a variety of recommendations designed to uphold due process and the rule of law for all noncitizens.

Recommendations

❖ **The Executive Office for Immigration Review (EOIR) should mandate that immigration judges hold brief, individualized, in-person hearings—similar to plea colloquies in a criminal proceedings—before approving stipulated orders of removal.** EOIR's regulations state that immigration judges "must" find that a noncitizen who is not represented by an attorney is making a waiver of rights that is "voluntary, knowing and intelligent" before approving a stipulated removal order. 8 C.F.R. § 1003.25(b).

The current stipulated removal order process fails to ensure voluntary, knowing, and intelligent waivers. EOIR should issue internal guidance requiring that immigration judges hold brief, in-person hearings for unrepresented persons who sign stipulated orders of removal. (If a noncitizen has a lawyer who has signed off on the stipulated removal order, the immigration judge should be authorized to sign the order without holding a hearing.)

These stipulated removal hearings would be akin to plea colloquies in criminal proceedings, where judges must advise defendants of certain rights and consequences of accepting a plea in order for a guilty plea to be valid. Such hearings would be for the very limited purposes of ensuring that noncitizens know what they are giving up when they sign stipulated removal orders and providing a safeguard against U.S. Immigration and Customs Enforcement (ICE) personnel manipulating or coercing noncitizens who do not have lawyers into accepting stipulated removal orders.

❖ **EOIR should expand access to counsel and legal information to immigrant detainees who are targeted for stipulated removal.** The vast majority of noncitizens who receive stipulated removal orders are not represented by attorneys. Against this backdrop, federal government programs to remove noncitizens without full hearings run the risk of wrongly deporting individuals who have meritorious claims to relief. To avoid this, the U.S. Department of Justice should:

- **Increase funding for the provision of legal orientation programs (LOPs) in all detention facilities where stipulated removal is offered to detainees.** If the U.S. Department of Homeland Security (DHS) wishes to continue using stipulated removal, more funds must be allocated to the provision of legal rights information in those jurisdictions where stipulated removal is used. At a minimum, stipulated removal should not be offered at detention facilities without LOPs.

- **Where LOP or other legal rights presentations are offered, ICE should be barred from offering stipulated removal to detainees until after detainees have had an opportunity to attend a legal rights presentation.** ICE should issue internal guidance at a national level requiring that ICE officers refrain from offering stipulated removal to detainees until after the latter have had an opportunity to attend a legal rights presentation, so that noncitizens who are offered stipulated removal have an opportunity to receive *accurate* information about their legal rights and options through LOP presentations.

- **Provide unrepresented noncitizens with a 72-hour waiting period to consult with an attorney before an immigration judge signs a stipulated removal order.** Due to evidence that many noncitizens sign stipulated removal orders without knowing what they are or understanding their legal consequences, EOIR should institute a 72-hour waiting period so that noncitizens can consult with an attorney before the stipulated removal order is signed by the immigration judge. At the time the noncitizen signs the stipulated removal order, the signer should be advised of this 72-hour period during which he or she may find and consult with counsel. ICE should then provide the person with a list of local pro bono or low-cost legal service providers.

❖ **DHS should require training to prevent U.S. Customs and Border Protection (CBP) and ICE officers from coercing and manipulating noncitizens into signing stipulated removal orders.** DHS should develop uniform training materials and protocols aimed at addressing reports of CBP and ICE agents pressuring and coercing noncitizens to accept stipulated removal. In developing the training materials and protocols, ICE should consult with immigrants' rights advocates who have experience with stipulated removal. ICE should require that all officers with authority to offer stipulated removal to immigrants undergo such training. Training materials should also be made available for public review and comment.

❖ **EOIR and ICE should respond to specific concerns raised by immigration judges in particular jurisdictions before implementing or continuing stipulated removal.** ICE's response to concerns raised by immigration judges about how the stipulated removal program is implemented should *not* be to route stipulated removal orders away from the judges who express the concerns. When an immigration judge in a particular district expresses misgivings about the use of stipulated removal, the chief immigration judge in the district, in consultation with a counterpart at ICE headquarters, should meet with the judge to resolve

the underlying problems with the stipulated removal order process. No immigration judge in the district should be permitted to sign stipulated removal orders until the concerns are resolved.

- **DHS should provide language access to ensure the integrity of the stipulated removal process.** DHS should issue guidance and protocols for how its officers are to use certified interpreters when discussing stipulated removal with noncitizens who do not speak English fluently. At a minimum, any scripts ICE uses to explain stipulated removal to detainees should be reviewed and approved by professional translators. ICE agents who offer stipulated removal to immigrant detainees in a foreign language should either be fluent in that language or should use a certified interpreter to explain the stipulated removal order.

- **Targeting the most highly vulnerable noncitizens and those with strong ties to the U.S. for stipulated removal should be prohibited.** DHS should issue internal guidance, on a national level, prohibiting its officers from using stipulated removal to remove juveniles, mentally disabled persons, lawful permanent residents, and noncitizens with over 10 years of presence in the U.S.

- **Detainees (or their representatives) who call EOIR's toll-free (800) number for information about their immigration cases should be told whether or not they have signed a stipulated order of removal request.**

- **DHS should inform the public when it intends to use stipulated removal in a particular jurisdiction.** Members of the public, especially members of the immigration bar, should be notified when DHS plans to expand the use of stipulated removal in particular geographic areas. ICE should specify whether stipulated removal is being offered to detained or nondetained individuals. Notice to the public will enable attorneys and advocates both to inform the community about the legal consequences of stipulated removal and potentially to work with ICE to ensure that noncitizens who accept stipulated removal orders have access to basic legal information.

- **ICE and EOIR should report to the public on their use of stipulated removal, at both the national and local levels.** Members of the public should not have to submit and litigate requests under the Freedom of Information Act in order to obtain information about the government's use of stipulated removal. ICE and EOIR both should publish statistics regarding their implementation of stipulated removal. National-level statistics should be available, as should information by immigration court and by detention facility.

- **ICE should not treat stipulated removal as its solution to a perceived shortage of immigration detention space.** Instead, ICE should aggressively utilize alternatives to detention. Stipulated removal is not a sound solution to the perceived need for more detention bed space, as ICE has claimed. Alternatives to detention, such as community-based reporting programs, exist and have proven to be successful. Rather than continue or expand the use of stipulated removal, ICE and Congress should vigorously explore the use of alternatives to detention and consider whether the individuals targeted for stipulated removal should be placed in removal proceedings at all. Congress should also pursue broader solutions to the nation's broken immigration system through comprehensive immigration reform.

Notes

[1] *NLG SF et al. v. Dep't of Homeland Sec.*, No. C 08-5137 RS (N.D. Cal.).

[2] *See ICE Fiscal Year 2008 Annual Report: Protecting National Security and Upholding Public Safety* (U.S. Immigration and Customs Enforcement, undated), available at www.nilc.org/immlawpolicy/arrestdet/ICE-fy2008-annual-report.pdf (last visited Aug. 24, 2011), p. 28 ("In FY08, ICE attorneys obtained 91,374 final orders of removal; [*sic*] which included 30,707 stipulated orders of removal . . . ."). ICE has reported obtaining a similar number of stipulated removal orders in fiscal year 2009. *Immigration and Customs Enforcement: Salaries and Expenses: Fiscal Year 2011: Overview: Congressional Justification* (U.S. Dept. of Homeland Security, undated), www.ice.gov/doclib/foia/secure_communities/fy2011overviewcongressionaljustification.pdf (last visited Aug. 24, 2011), p. 18 (stating that ICE's Office of the Principal Legal Advisor "focused legal support and stakeholder training efforts on the stipulated removal program to eliminate the need to have an in-person hearing before an immigration judge" and that, as a result, "[a] total of 29,012 cases were completed through the stipulated removal process.").

[3] The records obtained through the FOIA are available at www.law.stanford.edu/program/clinics/immigrantsrights/#advocacy_projects (last visited Aug. 24, 2011; search for "Stipulated Removal FOIA Lawsuit").

[4] *See* Memorandum from John Morton, Assistant Secretary, U.S. Dept. of Homeland Security, subject: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens (Jun. 30, 2010), available at www.nilc.org/immlawpolicy/arrestdet/ICEmemo-civil-enforcement-priorities.pdf (last visited Aug. 24, 2011).

[5] Email from A. Greer to EOIR Officials, re: Another Inquiry About Stipulated Removal Orders (June 15, 2006) (EOIR-2008-5140(8)-000084-87).

[6] *See also United States v. Ramos*, 623 F.3d 672 (9th Cir. 2010).

[7] *See, e.g.*, Memorandum from Mark Reed, ICE Regional Director, to Central Region District Directors and Chief Patrol Agents, re: Administrative, Stipulated, and Reinstated Removals (June 4, 1998) (ICE.08-1450.000001) ("mandating" the use of administrative, stipulated, and reinstated removals "as early as possible in the investigative or arrest stages" and noting that it is "imperative all Districts and Sectors ensure the maximum possible use of these procedures"); Memorandum from Dwayne E. Peterson, ICE Acting Regional Director, to Central Region District Directors and Chief Patrol Agents, re: Alternative Removal Proceedings (Aug. 28, 1997) (ICE.08-1450.00003) (stating that "notice to appear before an immigration judge should only be served after clearly determining that the alien is ineligible for alternative removal proceedings," including stipulated removal); Memorandum from Thomas C. Leupp, Eastern Regional Director, EOIR, to Eastern Region District Directors and Chief Patrol Agents, re: Stipulated Removal Changes Under IIRIRA (July 24, 1997) (EOIR-2008-5140(7)-0000451) (in which the regional director "strongly recommend[s] . . . implementing an aggressive program in your location" to use stipulated removal on all noncitizens for whom reinstatement or administrative removal are inappropriate); Memorandum from Brian R. Perryman, Executive

Associate Commissioner, Headquarters Office of Field Operations, ICE, to Regional and District Directors, Chief Patrol Agents, and Service Center Directors, re: Alternative Removal Proceedings (July 31, 1997) (ICE.08-1450(13).000258) (encouraging use of alternatives to immigration court proceedings, including stipulated removal).

[8] *See, e.g.*, Memorandum from Antony Tangeman, DRO Director, to Leonard Kovensky, Deputy Assistant Director of Field Operations Division and Field Office Directors, re: UPDATED [*sic*] Guidance for use of stipulated removals (Jan. 12, 2004) (ICE.08-1450.000006) (requiring that all field office directors coordinate with Office of Chief Counsel (OCC) and local court to develop procedures for stipulated removal orders); Memorandum from Asa Hutchinson, Undersecretary for Border and Transportation Security, DHS, to Robert Bonner, Commission of Customs and Border Protection, and Michael J. Garcia, Assistant Secretary of ICE, re: Detention Prioritization and Notice to Appear Documentary Requirements (Oct. 18, 2004) (ICE.08-1450(3)-000157) (noting that "[e]ach component must ensure apprehended aliens are processed efficiently and placed in the appropriate and most expedient removal process," including stipulated removal); Memorandum from Mary Forman, Director of ICE Office of Investigations, and Victor Cerda, Acting Director of DRO, to All Special Agents in Charge and All Field Office Directors, re: ICE Transportation, Detention and Processing Requirements (Jan. 11, 2005) (ICE.08-1450(3)-000155) (referencing above Hutchinson memo and reiterating emphasis on use of stipulated and other alternative forms of removal); Memorandum from John P. Torres, DRO Director, to Field Office Directors and Deputy Field Office Directors, re: Recommendations to Improve Removal Processes (Feb. 22, 2007) (ICE.08-1450.000007) (providing redacted recommendations of national working group on streamlining removal process).

[9] *See, e.g.*, Memorandum from John P. Torres, DRO Director, to Field Office Directors, re: Bed Space Management (Aug. 1, 2007) (ICE-08-1450(4)-000031) (instructing that "each of you must . . . [e]xpand the use of Stipulated Orders of Removal"). Around the same time, then-director of ICE Julie Myers similarly suggested that all lawyers for ICE implement, and record, their use of stipulated removal. Email from R. Sanchez, Deputy Chief, Enforcement Law Division, ICE, to G. Ward, re: Bed space meeting homework /stip removals (Aug. 31, 2007) (ICE.08-1450(13).000096).

[10] *See* Email from redacted sender to redacted recipients, re: stipulated removals (Nov. 2, 2006) (ICE-08-1450(3).000262) (stating that the Denver office will begin stipulated removals and instructing recipients to "encourage to stip away!"); Emails between CAP Supervisory Detention and Deportation Officer in Orlando, FL, and J. Grim, Deputy Chief Counsel, DHS, re: § 238 Admin. Removal Cases and Stips (Mar. 11, 2009) (ICE-1450(8).000369-70) (stating that they plan to increase the use of administrative removal and stipulated removal orders); Email from R. LeFevre, Chief Counsel, San Francisco Office, to N. Alcantar and T. Aitken, re: Stipulated Removals (June 1, 2006) (ICE.08-1450.000448) (stating that "if we do 500 [stipulated removals] or so a year it is helpful, but 1,000 would be nicer").

[11] In the documents received through the FOIA litigation, government officials appear to use the terms "voluntary departure" and "voluntary return" interchangeably to refer to the option of allowing a noncitizen to return to his or her country without suffering the penalty of a formal removal order. Technically, the terms refer to two different forms of immigration relief. Voluntary *departure* is a form of immigration

relief granted by immigration judges to individuals in removal proceedings. Voluntary *return* may be discretionarily offered by ICE or CBP officials to a noncitizen *before* he or she is placed in removal proceedings in front of an immigration judge.

[12] *See* 8 U.S.C. § 1182(a)(9) (bars on reentry after issuance of removal order).

[13] *See* 8 U.S.C. § 1326 (criminal provision governing reentry of previously removed aliens); 8 U.S.C. § 1321(a)(5) (civil provision governing reinstatement of prior removal orders).

[14] Email from redacted sender to T. Bird, re: 30-50 Stipulated NTAs to file Thursday (Apr. 13, 1999) (ICE-08-1450(3)-000142) (responding to Bird's comment that for Mexican nationals without criminal convictions, "[i]f these aliens are not criminals and are just from Mexico then you may want to consider just giving them V.R. [voluntary return]").

[15] Email from F. Venegas, Deputy Field Office Director, ICE, to E. Gastelo, Acting DCC, ELP-OCC, re: Stipulated Removals (Aug. 6, 2008) (ICE-08-1450(7).00002); *see also* Email from J. Alderman, to redacted recipient, re: Stipulated Removals (Oct. 10, 2007) (ICE-08-1450(4)-000080) (asking that office "keep an accurate log of how many times Stips are offered and refused" because "it's on our portion of the dashboard report to routinize the use of Stips").

[16] Email from redacted sender to redacted recipient (Jan. 17, 2007) (ICE-08-1450(5)-000298).

[17] Email from redacted sender to redacted recipients, re: Stipilated [*sic*] Removals July 2006 (Aug. 1, 2006) (ICE.08-1450(11).000456) (celebrating reaching goal of 100 stipulated removal orders a month and suggesting that San Francisco office reach 200 a month).

[18] Email from R. Mateo, ICE Deputy Chief Counsel, to T. Scala and S. Siegel, re: BTC Stipulations (Apr. 2, 2007) (ICE-1450(9).000642) (asking for further clarification on numbers of stipulated removal orders, including number of stipulated removals obtained by each individual recipient, and noting that the writer wants to "get you guys additional recognition").

[19] Email from redacted sender to T. Aitken and N. Alcantar, San Francisco DRO, re: Total Stips for Dec 2007 (Feb. 8, 2008) (ICE.08-1450(11).000597). The author of this email also suggested that "[t]he easiest way may be to set goals, something like 25% of NTAs should be stipped and maybe provide training," and noted that "[a]ll you need is one hard charging IEA to kick out a bunch of stips to show it can be done."

[20] *See, e.g.*, Email from M. Jauregui, Court Administrator, San Francisco Immigration Court, to an immigration judge, re: Stipulated Removal Program (Oct. 23. 2007) (EOIR-2008-5140(5)-000061) (asking if the IJ was willing to participate in signing stipulated orders of removal and stating, "If you are, please note that these cases will count as completions for the month, but as previously mentioned must be reviewed and signed off on the same day."). According to the Transactional Records Access Clearinghouse, the number of cases pending before the immigration courts reached an all-time high of 242,776 at the end of March 2010. *Immigration Case Backlog Still Growing* (Transactional Records Access Clearinghouse, May 24, 2010), http://trac.syr.edu/immigration/reports/232/ (last visited Aug. 24, 2011).

[21] Email from S. McDaniel to S. Griswold and S. Rosen, re: Stips (Apr. 25, 2008) (EOIR-2008-5140(5)-000039-42) (noting that a San Francisco court was able to meet "case completion goals" due to the large number of stipulated removals in the jurisdiction).

[22] ICE.08-1450(13)-159-60.

[23] *See, e.g.*, Email from J. Stolley to R. LeFevre, L. Rosenberg, and L. Ungerman, re: Review of Stipulated Removals (Nov. 8, 2006) (ICE.08-1450(11).000481) (stating that "fifteen minutes is way too long" a period of time for a DHS trial attorney to review a stipulated removal order for legal sufficiency and instructing recipient to "[c]ut that in half").

[24] *See, e.g.*, Email from CAP Assistant Field Office Director, ICE/DRO, to C. Lopez, J. Roman, and redacted recipient, re: STIPS/Admin Order (Mar. 7, 2008) (ICE.08-1450(8).000376-77) (noting that "Collier County Sheriff's Office (CCSO) 287(g) team and the CCSO management seek to pursue a concentrated stipulation effort.").

[25] Email from J. Alderman, ICE Acting Field Office Director, Baltimore, to redacted recipient, re: Stipulated Removals (Sept. 25, 2007) (ICE-08-1450(4)-000084) ("Obviously, our goal is to obtain as many final orders while the aliens are incarcerated by the county or state as possible. . . . Aliens in our county facilities are the prime targets for these orders and any help you guys can get us will be greatly appreciated."); Email from redacted sender to T. Aitken and N. Alcantar, re: Total Stips for Dec 2007 (Jan. 17, 2008) (ICE.08-1450(11).000597) (noting that, in San Francisco region, "almost all of our stips came from Co. Jails").

[26] *See* note 29, *infra*.

[27] *See Policy Brief: Community-Based Alternatives to Immigration Detention* (Detention Watch Network and Stanford Immigrants' Rights Clinic, Aug. 2010), www.law.stanford.edu/program/clinics/immigrantsrights/pdf/DWN_ATD_Report_FINAL.pdf (last visited Aug. 24, 2011).

[28] *See* Karen Tumlin, Ranjana Natarajan, and Linton Joaquin, *A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers* (National Immigration Law Center, 2009), www.nilc.org/immlawpolicy/arrestdet/A-Broken-System-2009-07.pdf (last visited Aug. 24, 2011).

[29] *See* ICE.08-1450(13).0000258 (the "expeditious removal of detained aliens will result in a more efficient use of our detention funds and bed space."); ICE-08-1450(4)-000084 ("Obviously our goal is to obtain as many final orders while the aliens are incarcerated by the county or state as possible. Our bed space issue is very tenuous here in Maryland and I want to do as much within CAP as possible to alleviate the situation.").

[30] *See* Stipulated Final Orders of Removal, Standard Operating Procedures (San Antonio) (ICE-08-1450(4)-000148) ("At this moment, we are only processing all EWI and overstays without convictions alleged in the NTA."); Memorandum from B. Perkins to All NTA-Issuing Posts, Department of Homeland Security, San Diego (EOIR-2008-5140(6)-000582) ("There must be only one charge on the NTA and that is under section 212(a)(6)(A)(I) of the [INA], present without inspection or parole.").

[31] *See Ramos*, 623 F.3d at 678 (describing testimony of deportation officer that immigrant detainees in Eloy, AZ, are selected for participation in stipulated removal

based on whether a detainee "1) is a citizen of Mexico, 2) has been in the United States for less than ten years, and 3) has been charged with illegal entry into the United States").

[32] In fact, one reason why the government aggressively encouraged the use of stipulated removal after 1997 was that it changed its internal rules to allow the use of stipulated removal on noncitizens without counsel. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312 (Mar. 6, 1997).

[33] *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court* (National Immigrant Justice Center, Sept. 14, 2010), www.immigrantjustice.org/policy-resources/isolatedindetention/intro.html (last visited Aug. 24, 2011).

[34] *Id.*

[35] *Id*.

[36] *Id*.

[37] Memorandum from Steven Lang, General Counsel, EOIR, to Mary Beth Keller, Kevin Chapman, and Locky Nimick, re: Options for Improving Immigration Judge Acceptance of Requests for Orders of Stipulated Removal by Detained Aliens without Counsel (June 16, 2006) (EOIR-2008-5140(3)-000145-47).

[38] *See* Memorandum from John Morton, Assistant Secretary, U.S. Dept. of Homeland Security, subject: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens (Jun. 30, 2010), available at www.nilc.org/immlawpolicy/arrestdet/ICEmemo-civil-enforcement-priorities.pdf (last visited Aug. 24, 2011).

[39] *See* SDC Stip Presentation, Stipulated Deportation Training (CBP-2008F2653(2)-000088) (referencing "juveniles" on slide describing challenges to stipulated removal); Chief Counsel Offices Responses: Stipulated Removal Process (Feb. 10, 2006) (ICE.08-1450(13).000230) (noting that an immigration judge in Houston/Huntsville area "agreed to expand to juvenile program").

[40] Chief Counsel Offices Responses: Stipulated Removal Process (Feb. 10, 2006) (ICE.08-1450(13).000223) (note from Baltimore Chief Counsel indicating that "We do use Stipulated Removal in cases of aliens who have been found not criminally responsible and who are detained at a state mental institution.").

[41] *See* Email from redacted sender to redacted recipients, re: stipulated removal form for admin. closed case (Aug, 10, 2005) (ICE.06-23467-000512-13).

[42] Chief Counsel Offices Responses: Stipulated Removal Process (Feb. 10, 2006) (ICE.08-1450(13)-000222-46, 233).

[43] Stips Presentation (Spanish) (ICE-08-1450(6)-000066). The passage from the Spanish-language script quoted in the graphics on pp. 10 and 11 of this report reads as follows (quoted verbatim, showing emphasis in the original and with all errors of grammar, diction, spelling, etc., reproduced exactly as in the script, except that italics have been substituted for underlinings or bolded text):

> . . . Si van ha pelear su caso solo hay tres maneras para defenderse. 1) Si estan *casados legalmente con una persona* que sea residente o ciudadano. 2) Si sus *padres*on residentes o ciudadanos. 3) Por ultimo cualquier *hermano o hermana* que sea residente o ciudadano.

> *Solo estos tres grupos pueden ser una solicitud para arreglar sus papeles!*
>
> Si no tiene ninguno de estas maneras para defenderse entonces sera muy dificil que puedan arreglar su estatus inmigratoria en Estados Unidos. Estan en todo su derecho ver al juez pero quiero que esten concientes que este proceso se tarda de *6 meses a 3 anos*.
>
> Ahora que ya saben que se tarda un mes para ver al juez, el proceso que hago yo se llama *Deportacion Stipulada* . . . . La gran differencia en este processo es que elimina/corta el tiempo en la mitad.
>
> Deje me explico: 1) si son de Mexico entonces se tardan de 5 a 10 dias y jamas van enfrente de un juez aqui solo se hace el papeleo usted firma y el juez verifica que todo este en linea y estara camino a Mexico!

[44] *See id.* (stating that brothers and sisters of "residents" can "fix their papers").

[45] In some cases, noncitizens with criminal convictions are eligible to seek bond from an immigration judge through a hearing known as a "Joseph" hearing.

[46] Informal Explanation of Stipulated Removal Process (ICE-08.1450(6)-000223, ICE-08.1450(12)-000033, and ICE-08.1450(10)-000370).

[47] Email to Chief Counsel, San Francisco, re: stipulated removal form for admin. closed cases (Aug. 5, 2005) (ICE.08-1450(11).000380-81) (noting problem of officer incorrectly preparing forms).

[48] *See* Email from P. Nishie, to P. Spaletta, E. Lopez, C. Cutler, J. Castro, M. Curry and S. Nohara, re: Stip (Aug. 23, 2007) (ICE.08-1450(9).001158) (providing guidance on stipulated removals and noting that, aside from derivative citizenship claims, "OCC will not reject stips on the grounds that an alien may be eligible for a form of relief."); Email from M. Meymarian, to C. Giallourakis, D. Landau, J. Balasquide, K. Senkus, M. Metzgar, N. Acri, J. Connolly, J. DeFoor, re: Update on Stipulated Orders of Removal (May 28, 2004) (ICE.08-1450(13).000158) (boasting that 119 stipulated removal orders had been received, only one of which was "retracted . . . when his EWI wife hired a lawyer." Encourages recipients to "try to use the Admin Removal over the Stipulated Order, because if the person withdraws the Stipulation, then the IJ may find a way to grant them some relief").

[49] *See Ramos*, 623 F.3d at 678 (noting testimony of deportation officer that, once a noncitizen is selected for participation in stipulated removal, "[i]mmigration enforcement agents do not read the A-file further to determine whether detainees selected for the stipulated removal are eligible for any relief from removal").

[50] *See* Email from P. Nishiie, to P. Spaletta, E. Lopez, C. Cutler, J. Castro, M. Curry, and S. Nohara, re: Stip (Aug. 23, 2007) (ICE.08-1450(9).001158) (stating that "OCC will not reject stips on the grounds that an alien may be eligible for relief").

[51] *See, e.g.*, Stipulated Orders: A Primer (ICE.08-1450.000527) (document from York, PA, ICE office instructing agents to "NOT convince or coerce an alien to sign a stipulated order"); Email from redacted sender to redacted recipients (May 5, 2006) (ICE.08-1450.000147) ("DO NOT 'push' this on aliens. You must ascertain that the subject indeed wants to go home, and will not be applying for VD, claims no Asylum, related issues, etc.").

[52] 8 C.F.R. § 1003.25(b).

[53] *See, e.g.*, Email from C. Shanahan, ICE Field Office Director, New York, to M. Flores, re: Stipulated Removals (Feb. 28, 2008) (ICE-08-1450(6).000134-36) (indicating that chief immigration judge and court administration in New York City "stated clearly that they will not sign off on Stipulated Removal Orders without having the detainee brought to court"); Email from J. Grable, to D. Cassidy (Jan. 23, 2007) (ICE-08-1450(9).273) (explaining that immigration judges in San Juan and Buffalo require court appearances for unrepresented aliens); Email from M. Ramos, to V. Reyes-Lopez, C. Guilloty-Dorsey, J. Ramos, re: Stipulated Removals San Juan due date Feb 14 (Feb. 13, 2007) (ICE.08-1450(10).000648-49) (noting than an IJ rejected stipulated removal orders because the "alien could possibly have a relief from removal"); Summary: Chief Counsel Office Responses Regarding Stipulated Removal Process (Feb. 10, 2006) (ICE-08-1450(7)-000139) (an internal ICE document describing the "less successful" stip removal programs as those where "many" IJs hold hearings to determine whether the noncitizen's waiver is valid, a practice which the author refers to as "making the use of a stipulated order pointless.").

[54] *See* 8 C.F.R. § 1240.11(b) (The immigration judge shall inform the alien of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the alien an opportunity to make application during the hearing.").

[55] Email from. A. Vomacka, Immigration Judge, New York, to S. Rosen and S. Burr, re: Stips (May 7, 2008) (EOIR-2008-5140(5)-000314).

[56] *ICE Seeks to Deport the Wrong People* (Transaction Records Access Clearinghouse, Nov. 9, 2010), http://trac.syr.edu/immigration/reports/243/ (last visited Aug. 24, 2011).

[57] *See, e.g.*, Email from J. Vandello to A. Vomacka, re: Stipulated orders (Jan. 26, 2007) (EOIR-2008-5140(4)-000218) (email from immigration judge noting the receipt of "a few recently where the aliens alleged they just told them to sign"); Email from redacted sender to redacted recipient, re: STIPs (Dec. 14, 2004) (ICE-08-1450(3).000294-95) (discussing cases where immigration judge found noncitizen eligible for relief); Email from redacted sender to redacted recipients, re: STIPs (Dec. 16, 2004) (ICE-08-1450(3).000296-97) (same).

[58] Email from A. Greer to EOIR Officials, re: Another Inquiry About Stipulated Removal Orders (June 15, 2006) (EOIR-2008-5140(8)-000084-87) (emphasis added). This email also noted that in Buffalo, NY, "there had been problems in the past with stipulations from unrepresented aliens. Specifically, non English speaking aliens had signed stipulations but later, when speaking with the judge by telephone, indicated he [*sic*] did not understand what he [*sic*] had signed."

[59] Email from B. Gibson, EOIR Legal Access Counsel, to S. Lang, EOIR Associate General Counsel, re: Stipulated Orders (July 7, 2005) (EOIR-2008-5140(2)-000075).

[60] *See, e.g.*, DHS/EOIR Liaison Meeting, DHS Agenda Items (Oct. 4, 2007) (ICE.08-1450(13).000022-23) ("ICE has noted that some immigration judges are not accepting stipulated orders [and] others are requiring in-person interviews before accepting any such orders . . . ."); Chief Counsel Offices Responses: Stipulated Removal Process (Feb. 10, 2006) (ICE.08-1450(13).000222-46) (noting that in Boston, Buffalo, Honolulu, Houston, Los Angeles, New Orleans, New York, Newark, Phoenix, San Antonio, San Juan and Seattle, at least one—and in some

cases all—of the immigration judges will not sign stipulated removal orders without a hearing).

[61] *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10322 (Mar. 6, 1997).

[62] *See* Chief Counsel Offices Responses: Stipulated Removal Process (Feb. 10, 2006) (ICE.08-1450(13).000230) (noting that, at the Lancaster detention facility near Los Angeles, "only one IJ will take" stipulated removals, that "[t]he other Lancaster IJ won't do them" and the "IJs at San Pedro won't do them," but that the single IJ willing to sign stipulated removals "is staying until 8:00 pm many evenings to complete" the orders); Chief Counsel Offices Responses: Stipulated Removal Process (Feb. 10, 2006) (ICE.08-1450(13).0000246) (describing use of stipulated removal in the Northwest, where "we have approximately 1,000 stips a year" and they are "centralized in that they are signed off on by the Seattle IJs" because the immigration judge in Portland "does not sign off on any of them eventhough [*sic*] the Portland attorneys may be reviewing and forwarding to EOIR."); Email from P. Vroom to B. Howard, ICE Principal Legal Advisor, re: Administrative Stipulated Removals (Jan. 4, 2004) (ICE.08-1450(13).000205-07) (reporting that ICE has "asked" that one immigration judge in Eloy, AZ, "not be assigned any [stipulated removal orders], and EOIR, recognizing the reasonableness of excluding him, has cooperated").

[63] According to EOIR, the following judges approved of the highest number of stipulated removal orders in the country from April 1, 1997, through May 21, 2010: Rex Ford (9,642); William A. Cassidy (8,577); George P. Katsivalis (8,184); William J. Nickerson, Jr. (7,597); John W. Davis (6,445); Thomas Michael O'Leary (6,149); E. Anthony Rogers (5,987); Sean H. Keenan (5,533); D. William Evans, Jr. (4,546); Robert D. Vinikoor (4,292).

[64] Email from P. Vroom, to B. Howard, ICE Principal Legal Advisor, re: Administrative Stipulated Removals (Jan. 4, 2004) (ICE.08-1450(13).000205-07).

[65] Memorandum from Brian M. O'Leary, Chief Immigration Judge, to All Immigration Judges, Court Administrators, Attorney Advisors, Judicial Law Clerks and Immigration Court Staff, subject: Operating Policies and Procedures Memorandum 10-01: Procedures for Handling Requests for a Stipulated Removal Order (Sept. 15, 2010), www.justice.gov/eoir/efoia/ocij/oppm10/10-01.pdf (last visited Aug. 24, 2011).

[66] A number of internal communications related to these forms reference the need to "withstand judicial challenge" while also encouraging noncitizens to accept stipulated removal. *See, e.g.*, Email from Immigration Judge to S. Rosen, EOIR Senior Counsel, General Counsel's Office, Falls Church, VA, re: Stipulated Removal Orders (Jan. 10, 2007) (EOIR-2008-5140(3)-000105) (discussing proposed changes in stipulation forms that would "pass muster in Federal Court"); Email from J. Griffin, Court Administrator, Miami, FL, to S. Rosen, EOIR Senior Counsel, General Counsel's Office, Falls Church, VA, re: Stipulated Removal Forms – San Francisco (Feb. 6, 2007) (EOIR-2008-5140(5)-000671-75) (noting stipulations forms were developed "with a special consideration for Ninth Circuit scrutiny"); Email from K. Jones to K. Chapman, L. Nimick, and M. Keller, re: Stipulated removals (Feb. 6, 2007 & Feb. 7, 2007) (EOIR-2008-5140(5)-000793) (focusing on streamlining and modifying the stipulated removal forms so that it is easier for judges to find an alien's signature and waiver are "voluntary, knowing, and

intelligent," without requiring a hearing). *See also* Email from J. Alderman, ICE Acting Field Office Director, Baltimore, to redacted recipient, re: Stipulated Removals (Sept. 25, 2007) (ICE-08-1450(4)-000084) (asking to obtain draft of uniform stipulated removal request, noting that the jurisdiction's existing draft "almost convinces the alien to not enter into a stipulated removal order" and that "we have not been able to get one alien in any of our facilities to agree").

[67] *See Ramos*, 623 F.3d at 678.

[68] Email from A. Reese to L. Dean, re: Stips (Aug. 1, 2008) (EOIR-2008-5140(4).000058); *see also* Email from A. Reese, to L. Dean, re: Stipulated Order Packet (Mar. 29, 2008) (EOIR-2008-4150(4)-000056) ("I still have a little problem with the officer certification [on the stipulated removal form,] which they changed from the officer being fluent in Spanish to 'proficient'. [*sic*] Without knowing how proficient the officer is, we could still be setting ourselves up for trouble.").

[69] Chief Counsel Offices Responses: Stipulated Removal Process (Feb. 10, 2006) (ICE.08-1450(13).000222-46, 236).

"The government documents summarized in this report present a dismal picture of the stipulated removal program—a program that, until recently, has operated with little public scrutiny."

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