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US IMMIGRATION & NATIONALITY LAW

ICE PRESENCE AT DOMESTIC AIRPORTS BLURS THE LINE BETWEEN AIRPORT SECURITY AND IMMIGRATION ENFORCEMENT

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In recent weeks, President Trump has dispatched ICE agents to some major airports, purportedly to fill in for TSA workers who are furloughed as a result of the DHS shutdown. Tom Homan, the Trump administration's border czar, has hinted that ICE agents may remain in airports even after TSA agents return to work. This measure has raised serious concerns among immigration advocates and immigrant communities. Fears abound that ICE agents may be exceeding the scope of normal TSA operations, and may ask travelers who appear to be non-U.S. citizens or present documents such as foreign passports immigration status related questions, or target them for enforcement measures.

The ICE presence in airports may be unsettling even for travelers who are in a lawful immigration status. Many undocumented individuals fly domestically within the United States, however, as do individuals whose immigration status may be more ambiguous – because, for example, they are in a period of authorized stay after having filed an adjustment of status or asylum application. If targeted by ICE agents in airports for enhanced scrutiny, these individuals could be at risk for detention or deportation.

This policy is just the latest in a series of Trump administration measures aimed at thwarting immigration and facilitating removal. The Trump administration has also adopted an extremely broad interpretation of the immigration laws and regulations in order to expand the categories of noncitizens who can be detained without bond. In a reversal of longstanding policy, the Board of Immigration Appeal (BIA) has reinterpreted INA 235(b)(2)(A) and INA 236(a) to

hold that noncitizens who are present in the United States after having entered without inspection (EWI) are subject to detention without bond, whether or not they separately "seek admission". The Eighth Circuit in *Avila v. Bondi* recently upheld the BIA's interpretation in *Matter of Yajure Hurtado*, holding that "the structure of § 1225(b)(2)(A) does not indicate that 'seeking admission' is a separate requirement for detention under the statute". The court further found that "because the text does not place such emphasis on "seeking admission," and since the phrase means virtually the same thing as 'applicant for admission,' in the context of the statute the two phrases are synonymous". In its decision, the Eighth Circuit cited the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, which held that noncitizens who entered without inspection are ineligible for bond.

The ICE presence at airports will result in more vulnerable noncitizens getting caught up in the ever-expanding dragnet for detention and removal. A person who is in removal proceedings with a meritorious application for relief such as cancellation of removal may get detained without bond if they encounter an ICE officer at an airport if they initially entered the country without inspection. Likewise, one who has a pending adjustment of status application, but whose nonimmigrant status has expired could also be amenable to be placed in removal proceedings.

Even if the initial objective is for ICE agents to assist TSA officers during the shutdown, this policy will blur the line between airport security, which is paramount, and immigration enforcement that is not required at domestic airports. ICE officers may be prone to questioning the immigration status of passengers when the role of TSA is to ensure that those boarding planes have the necessary identification documents. Even US citizens and those residing in the US lawfully could be suspected of being in the US illegally, resulting in needless distractions from TSA's mission to maintain airport security. While the stated purpose of ICE presence at airports is to facilitate the process of getting people through TSA lines, ICE is an agency that was created with a different mandate, which is to identify potential immigrants who are not in the country legally.

As a result of the ICE presence, people may be deterred from flying even domestically especially those who have been targeted by the Trump administration for immigration enforcement. President Trump's post on Truth Social has not helped to allay fears as he said that agents would be doing

“security like no one has ever seen before, including the immediate arrest of all Illegal Immigrants who have come into our Country, with heavy emphasis on those from Somalia.” ICE agents have perpetrated abuses against American citizens by breaking down doors of homes and shattering the windscreen of cars in pursuit of apprehending noncitizens who are allegedly not in the US legally. ICE agents have also shot and killed Americans Renee Good and Alex Pretti, who were protesting against their activities. ICE presence at airports is bad news, which will further create the conditions for a police state in America!

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