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I. INTRODUCTION

As the Trump Administration moves to implement its mass deportation goals, is it *practically* possible for the federal government to deport substantially more individuals than the Obama Administration? After all, immigration enforcement under the Obama Administration reached unprecedented levels.[1] Under the Trump era, some have suggested that the current backlog in the immigration courts will prevent the federal government from meeting its deportation objectives, at least without substantial funding to increase the number of immigration judges.[2] My general response is less optimistic. While the immigration court backlog may partially impede the Trump Administration's goals for those noncitizens with cases in immigration court who are not detained, the under-resourcing of the immigration courts is unlikely to affect many noncitizens subject to deportation.[3] The current reality of immigration adjudication, in which most removals under the Obama Administration took place through a variety of legally sanctioned mechanisms that enabled the federal government to deport people without immigration court hearings at all, grounds this pessimistic attitude.[4] Mechanisms for removal without the immigration courts are already available and will likely be expanded by the

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1. Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 S. CAL. L. REV. 181, 183-84 (2017).

2. *See, e.g.*, Julia Preston, *Deluged Immigration Courts, Where Cases Stall for Years, Begin to Buckle*, N.Y. TIMES, (Dec. 1, 2016), https://www.nytimes.com/2016/12/01/us/deluged-immigration-courts-where-cases-stall-for-years-begin-to-buckle.html.

> The [immigration] courts will be a major obstacle for President-elect Donald J. Trump and his plans to deport as many as three million immigrants he says have criminal records . . . . [because] [m]any of those deportations—at least hundreds of thousands—would have to be approved by immigration judges . . . . Without significant new resources, the courts would probably slow Mr. Trump's deportations to a stall.

Id.

3. *Id.*

4. Koh, *supra* note 1, at 229.

Trump Administration.[5] In addition, the Trump Administration can—and has begun—to alter the nature of immigration court proceedings in small but potentially significant ways. While the precise scale and implications of the government's deportation efforts remains to be seen, the existing legal framework combined with the administration's immigration enforcement tactics thus far suggests that deportations will reach new levels under Trump.

In an article published earlier this year, *Removal in the Shadows of Immigration Court*,[6] I analyzed the explosion of removals taking place in immigration court's "shadows," meaning removal procedures that either completely bypass the immigration courts or removals in which an immigration judge only nominally evaluates the merits of the case.[7] As discussed in that article, removal procedures that enable the federal government to deport noncitizens with little or no participation by an immigration judge now comprise the vast majority of all removals.[8] As a result, as I explained, "noncitizens with cases that the immigration courts adjudicated on the merits have become the privileged and the few."[9] Expedited removal (for noncitizens seeking entry at the border) and reinstatement of previously executed removal orders, which are implemented entirely by frontline immigration officers with no immigration court oversight, accounted for between eighty-three to eighty-four percent of all removals in fiscal years 2013 and 2014.[10] Each shadow removal is accompanied by its own statutory and regulatory framework, leading to significant complexity in this area.[11] But some features that the various shadow removals share include restrictions on access to relief from removal and to administrative and judicial review.[12] In addition to the expedited, reinstated, administrative, *in absentia*, and stipulated removals discussed in that article,[13] the government can also effectuate physical deportation

5. *Id.* at 235.

6. *See generally id.*

7. *Id.* at 187. That article focused specifically on five removal processes: 1) expedited removal of noncitizens arriving at the border; 2) reinstatement of prior removal orders; 3) administrative removal of non-lawful permanent residents with aggravated felony convictions; 4) *in absentia* removal orders for individuals who fail to appear in immigration court; and 5) stipulated removals in which noncitizens waive their right to a court hearing. *Id.*

8. *Id.* at 183-84.

9. Koh, *supra* note 1, at 185.

10. JOHN F. SIMANSKI, U.S. DEP'T OF HOMELAND SEC., OFFICE OF IMMIGRATION STATISTICS, ANNUAL REPORT: IMMIGRATION ENFORCEMENT ACTIONS 2013, at 5–7 (2014); BRYAN BAKER & CHRISTOPHER WILLIAMS, U.S. DEP'T OF HOMELAND SEC., OFFICE OF IMMIGRATION STATISTICS, ANNUAL REPORT: IMMIGRATION ENFORCEMENT ACTIONS 2014, at 7 (2016).

11. Koh, *supra* note 1, at 183-84.

12. *Id.* at 194.

13. *Id.* at 183-85, 187.

without providing immigration court hearings through other means.[14] For example, the government can enforce previously unexecuted removal orders,[15] revoke previously granted administrative stays of removal,[16] effect removals under the visa waiver program,[17] and implement stipulated judicial removals in federal district courts.[18]

In the early months of the Trump Administration, the federal government has signaled an intention to exploit and expand the shadows of immigration court, such that the resource limitations of the immigration court system are unlikely to function as a meaningful, practical check on the government's ability to carry out its deportation goals.[19] If so, how might the movement for immigrants' rights be impacted? What shifts in strategy and resistance might become necessary?

This Essay discusses the early indications of the Trump Administration's plans to rely more heavily on the shadows of immigration court, along with the watering down of procedural protection in immigration courts. It also considers the implications of such an expansion for immigrant communities and for advocacy in this area,[20] with a focus on the potential for both legal and non-legal interventions. It concludes by calling on lawyers, organizers and allies to consider the explosion of shadow removals in resistance efforts.[21]

II. THE EXPANSION OF SHADOW REMOVALS

This section discusses several early indicators of the Trump Administration's plans to expand shadow removals while also diluting the

14. *See generally* 8 U.S.C. § 1231(a)(5) (2015).

15. The enforcement of an unexecuted removal order refers to a removal order that has become legally final but in which the person has not previously been physically removed. Reinstatement of removal, by contrast, applies to situations in which a person has physically departed the country pursuant to a removal order and subsequently re-entered without authorization. *See* 8 U.S.C. § 1231(a)(5) (2015).

16. An individual against whom removal has been ordered may seek a stay of removal directly from U.S. Immigration and Customs Enforcement (ICE), which can be granted in the discretion of the immigration agency. *See* 8 C.F.R. § 241.6 (2002).

17. *See* Jill E. Family, *A Broader View of the Immigration Adjudication Problem*, 23 GEO. IMMIGR. L.J. 595, 612-14 (2009) (discussing visa waiver program).

18. Under a stipulated judicial order, a federal district court judge has the authority to enter a removal order as a condition of a plea agreement, probation, and/or supervised release. *See* 8 U.S.C. § 1228(c)(5) (2015); s*ee also* Peter R. Moyers, *Butchering Statutes: The Postville Raid and the Misinterpretation of Federal Law*, 32 SEATTLE U. L. REV. 651, 717-718 (2009) (describing use of stipulated judicial orders of removal in conjunction with immigration raid on Postville, Iowa meatpacking plant).

19. *See* Koh, *supra* note 1, at 203 ("Future challenges to expedited removal in individual cases involving subsequent criminal prosecutions thus appear possible, but the structural deficiencies of expedited removal remain in place and are likely to intensify if expanded nationwide under the Trump administration.").

20. *See infra* Part II.

21. *See infra* Parts III and IV.

procedural rigor of immigration court. First, almost immediately after President Trump assumed power, the federal government announced plans to expand its authority to use expedited removal, which allows frontline agency officials to directly issue removal orders without any participation from an immigration judge.[22] The administration has explicitly cited the backlog in the immigration courts as one reason it intends to issue a new regulation with respect to expedited removal.[23] If the administration follows through on its announcement, the Department of Homeland Security (DHS) could establish its regulatory power to issue expedited removal against anyone believed to have entered the United States without authorization and who cannot show that they have been physically present in the country for two years prior to apprehension.[24] To understand the agency's ability to enact this dramatic shift in power, it is necessary to describe the statutory framework governing expedited removal, which was amended to take on its current form in 1996.[25] At its core, the expedited removal statute enables immigration officials to issue removal orders against certain classes of noncitizens who cannot establish their legal authorization to enter the United States.[26] The statute clearly provides that an immigration officer empowered to use expedited removal "shall order the alien removed from the United States without further hearing or review."[27] Since its enactment in 1996, the federal government has steadily expanded its powers under the expedited removal provisions, focusing first on official ports of entry, then all arrivals by land or sea, and —most recently—to all parts of the legal border, including 100 miles away from the physical border for individuals suspected of having entered without inspection fourteen days prior to apprehension.[28]

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22. Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017). Section 11(c) states: "Pursuant to section 235(b)(1)(A)(iii)(I) of the [Immigration and Nationality Act (INA) 8 U.S.C. § 1101 *et seq*.], the Secretary shall take appropriate action to apply, in his sole and unreviewable discretion, the provisions of section 235(b)(1)(A)(i) and (ii) of the INA to the aliens designated under section 235(b)(1)(A)(iii)(II)."

23. JOHN KELLY, DEP'T OF HOMELAND SEC., IMPLEMENTING THE PRESIDENT'S BORDER SECURITY AND IMMIGRATION ENFORCEMENT IMPROVEMENTS INITIATIVES, 6-7 (2017).

24. *Id.* at 6*; see* Lenni B. Benson, *Immigration Adjudication: The Missing "Rule of Law,"* 5 J. ON MIGRATION & HUMAN SEC., 331 (2017).

25. *See generally* 8 U.S.C. § 1225 (2015).

26. *See* Koh, *supra* note 1, at 200-01 (describing efficiency interests associated with expedited removal).

27. 8 U.S.C. § 1225(b)(1)(A)(i) (2015). Consistent with obligations imposed by the Refugee Convention and federal statutes, the expedited removal statute clarifies that individuals who express a fear of returning to their home countries should not receive expedited removal if they can establish that they have a credible fear of returning to their home countries. *See* Koh, *supra* note 1, at 196-99. The Trump Administration has also directed DHS to adopt stricter standards and procedures governing the credible fear process. *See* KELLY, *supra* note 23, at 7-8.

28. *See* Koh, *supra* note 1, at 197-98 (discussing expansion of expedited removal).

But the statutory potential of the expedited removal provision enacted by Congress is breathtaking in scope. Since its amendment in 1996, the statute has authorized the executive branch to apply the truncated removal process anywhere in the United States, to any individual suspected of having entered the country without inspection or parole within the two years prior to apprehension.[29] In the past, DHS has explicitly chosen not to exercise its full statutory authority.[30] The agency has acknowledged its potential to invoke expedited removal, but has expressed its intention to focus its resources at the border.[31] If implemented, a new regulation has the potential to radically transform the Trump Administration's immigration powers.[32]

To be clear, avoiding expedited removal does not mean avoiding the possibility of deportation altogether, as other forms of removal exist.[33] The goal for a noncitizen otherwise subject to—or suspected of being subject to—any kind of summary removal is to have the opportunity to be heard in immigration court. The immigration court system continues to operate with systemic deficiencies.[34] The most determinative factors of one's success in immigration court have long hinged on merit-blind variables such as the identity of the immigration judge to which one is randomly assigned, as well as the availability of counsel.[35] Immigration court, for all its flaws, nonetheless offers a more procedurally robust and neutral adjudication than expedited removal.

The expansion of expedited removal could potentially alter the nature of immigration policing throughout the United States. Immigration agents—whose numbers are expected to grow due to hiring increases—would have the power to apprehend and issue a removal order against any person apprehended throughout the U.S. who cannot show prior physical presence for the designated period of time (up to two years), and could do so without

29. 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (2015).

30. *See* Koh, *supra* note 1, at 197-98 (discussing DHS policies between the 1990s and 2000s).

31. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877, 48879 (Aug. 11, 2004) ("In the interests of focusing enforcement resources upon unlawful entries that have a close spatial and temporal nexus to the border, this notice does not implement the full nationwide expedited removal authority available to DHS pursuant to section 235 of the Act, 8 U.S.C. 1225.").

32. While outside the scope of this Essay, it is worth noting that litigation challenges to an expansion of expedited removal seem possible, under the Administrative Procedure Act and other grounds.

33. *See* Koh, *supra* note 1, at 187 (discussing categories of removal mechanisms available to the federal government).

34. Ingrid v. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 9 (2015) (noting certain "inefficiencies associated with the lack of representation in immigration courts.").

35. *See* Jaya Ramji-Nogales, et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 372–73 (2007); *see also* Eagly & Shafer, *supra* note 34, at 7.

ever placing the person in legal proceedings before an immigration judge.[36] For this reason, immigration advocates have advised noncitizens to consider carrying proof of two years' physical presence, for the sole purpose of avoiding an immediate removal under the anticipated provisions.[37] Given the delegation of the power to issue removal orders to frontline immigration officers who are neither judges nor attorneys, the risk of error is extremely high. The likelihood of racial profiling and enforcement tactics that induce fear in immigrant communities is also extraordinary.

Apart from expedited removal, the federal government may increase its use of other tools that allow it to remove persons without providing immigration court hearings. Already, persons previously granted stays of removal have been summarily removed despite long periods of prior residency in the U.S. and meaningful family ties.[38] On April 11, 2017, Attorney General Jeff Sessions directed federal criminal prosecutors to increase their prosecution of immigration violations under the federal criminal laws,[39] and in doing so, to maximize the use of stipulated judicial orders of removal—which would enable federal prosecutors to secure removal orders in exchange for the noncitizen's waiver of their right to an

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36. Paromita Shah & Julie Mao, *Supplemental Community Advisory: DHS Implementation Memoranda and Factsheets*, National Immigration Project, Mar. 7, 2017, at 4.

37. *See, e.g.*, *id.* at 4.

> Once the program goes into effect, we suggest that people who could be covered by expedited removal carry documents demonstrating they have been here for more than 2 years. The best types of documents are those that **do not** reference place of birth, country of origin, or home address. People who carry documents with identifying information risk giving up defenses to challenging expedited removal. (emphasis in original).

Id.

38. *See, e.g.*, Griselda Nevarez, *Arizona Woman Deported to Mexico Despite Complying with Immigration Officials*, THE GUARDIAN (Feb. 9, 2017), https://www.theguardian.com/us-news/2017/feb/09/arizona-guadalupe-garcia-de-rayos-deported-protests (describing case of Guadalupe García De Rayos). Cases involving previously granted stays of removal may arguably not constitute "shadow" removals insofar as those individuals' cases were previously litigated by the immigration courts. The fact remains, however, that physical deportations are being implemented swiftly and with little process by agency officials that do not account for equities or claims that may have since developed with the passage of time.

39. *See* Memorandum from Attorney Gen. Jefferson B. Sessions, *Renewed Commitment to Criminal Immigration Enforcement*, Apr. 11, 2017. In his memo addressed to federal prosecutors, Attorney General Jeff Sessions stated:

> While dramatic progress has been made at the border in recent months, much remains to be done. It is critical that our work focus on criminal cases that will further reduce illegality. Consistent and vigorous enforcement of key laws will disrupt organizations and deter unlawful conduct. I ask that you increase your efforts in this area making the following [enumerated] immigration offenses higher priorities.

Id.

immigration court hearing.[40] The expansion of immigration detention portended by the executive orders and memos issued in early 2017 suggests that the Trump Administration may revive the use of stipulated orders of removal, in which immigrant detainees waive their rights to a hearing in exchange for a faster removal, a practice that raises significant due process concerns.[41]

Second, indications that immigration court adjudication could shift in meaningful, though potentially more gradual, ways exist. If the Trump Administration continues in its current direction, even noncitizens with immigration court cases could receive less access to counsel, less access to relief, and diminished opportunities to legally contest their deportations. The most obvious change is the Trump Administration's announced plans to significantly expand immigration detention.[42] Much has been written about the harms of immigration detention.[43] It is well-established that detention fundamentally changes the quality of the immigration adjudication process for noncitizens, because everything—from identifying and communicating with one's lawyer, to collecting evidence, to having the time to fully develop one's case—becomes significantly more challenging when one is detained.[44] The Trump Administration has also reportedly considered plans to create sixteen-hour shifts so that detained immigration court calendars can run from 6 A.M. until 10 P.M, and to transfer judges for one- to two-month periods of time into detention centers.[45] In addition, the Justice Department has indicated that it is contemplating temporarily transferring immigration judges to select cities with the explicit goal of expediting deportations for immigrants with prior convictions.[46] Furthermore, the DOJ has announced its plans to expand the Institutional Hearing Program,[47]

40. *Id.*

41. *See* Jennifer Lee Koh, *Waiving Due Process (Goodbye): Stipulated Orders of Removal and the Crisis in Immigration Adjudication,* 91 N.C. L. REV. 475, 499-500 (2013) (describing internal government records related to use of stipulated removal from late 1990s to mid-2000s, and analyzing under procedural due process framework); *see also* Jennifer M. Chacon, *Immigration and the Bully Pulpit*, 130 HARV. L. REV. F. 243, 263-64 (2017) (predicting increased use of stipulated orders of removal under Trump Administration and discussing relationship to immigration detention).

42. *See* KELLY, *supra* note 23, at 8-9.

43. *See, e.g.*, César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA L. REV. 1346, 1384-85 (2014).

44. *Id.* at 1390.

45. Julia Edwards Ainsley, *Trump Administration Sends Judges to Immigration Detention Centers: Sources*, REUTERS, (Mar. 9, 2017, 7:55 PM), http://www.reuters.com/article/us-usa-immigration-judges-idUSKBN16H030.

46. Julia Edwards Ainsley, *Immigration Judges Headed to 12 U.S. Cities to Speed Deportations*, REUTERS, (Mar. 18, 2017, 5:56 PM), http://www.reuters.com/article/us-usa-immigration-judges-exclusive-idUSKBN16O2S6.

47. The Institutional Hearing Program "identifies removable criminal aliens who are inmates in federal correctional facilities, provides in-person and video teleconference (VTC) immigration removal proceedings, and removes the alien upon completion of the sentence, rather than releasing the alien to an

which allows removal proceedings for immigrants serving federal criminal sentences to begin prior to their release from criminal history, either via in-person hearings or (more likely) videoconferencing.[48] While it is too early to confirm which of the contemplated plans will come to fruition, it seems that Sessions will make full use of his authority as Attorney General—which includes power over the immigration courts and Board of Immigration Appeals—to dilute the protections available in those venues.[49]

These measures account only for a portion of what the Trump Administration has announced. It seems reasonable to assume that more changes are in store. But increasing the pace of detained removal proceedings, transferring immigration judges to remote detention centers, and allowing for more immigration court adjudication while persons are still in criminal custody would alter the nature of immigration court adjudication.[50] Judges on temporary assignment are less likely to be familiar with the history of the cases on their docket. Long court calendars may not impact judges who are permitted to share a court calendar, but would certainly discourage immigration attorneys from appearing at early-morning or late-night calendars with even longer waiting times than under current practice. Immigration court proceedings for persons in criminal custody will leave individuals with no opportunity for release on bond.[51] In other words, the hallmarks of the shadows of immigration court—less process, fewer lawyers, and fewer legal claims—could expand *into* the courtroom.

III. RESISTING IMMIGRATION COURT'S SHADOWS

Great urgency for lawyers and advocates to think and act creatively around how to resist the shadows of immigration court exists, alongside other methods of resistance under the current administration.[52] Most deportation advocacy efforts involve models in which the central site of

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[Immigration and Customs Enforcement] detention facility or into the community for adjudication status." Press Release, Department of Justice, Office of Public Affairs, *Attorney General Sessions Announces Expansion and Modernization of Program to Deport Criminal Aliens Housed in Federal Correctional Facilities*, WWW.JUSTICE.GOV (2017), https://www.justice.gov/opa/pr/attorney-general-sessions-announces-expansion-and-modernization-program-deport-criminal (last visited Aug. 5, 2017) [hereinafter DOJ Press Release].

48. *Id.*

49. The fact that the Board of Immigration Appeals and immigration judges ultimately report to the Attorney General has long had implications for the decisional independence and composition of those adjudicative agencies. *See* Kari Hong, *Removing Citizens: Parenthood, Immigration Courts and Derivative Citizenship*, 28 GEO. IMMIGR L.J. 277, 330-41 (2014) (discussing relationships between BIA and immigration judges, and the Attorney General).

50. Preston, *supra* note 2.

51. DOJ Press Release, *supra* note 47.

52. *See* Jayashri Srikantiah, *Resistance and Immigrants' Rights*, 8 STAN. J. CIV. RTS. & CIV. LIBERTIES 5, 8 (2017).

removal processing is the immigration court.[53] But given the growth of removals that take place with no immigration court involvement, immigrants' rights advocates might begin to rethink resistance with immigration court's shadows at the front and center of the conversation. This section sketches out some initial ideas, with the goal of contributing to a continuing conversation in which creativity, experimentation, and possible failure may occur.

For lawyers, the fundamental work of representing clients with compassion and zeal throughout the immigration process remains unchanged, but takes on a more urgent and focused character.[54] Of course, the need for federal court litigation that challenges the legitimacy of various forms of shadow removals, reviews the errors of immigration judges, and demands that Due Process and other constitutional principles apply to the immigration context exists.[55] But a basic need for greater legal representation—and expertise— in the myriad removals that take place outside the immigration courts exists amongst all immigration attorneys.[56] The level of knowledge in the immigration bar likely does not match the scale of the practice, given that only a portion of all immigration lawyers specialize in removal defense to begin with.[57] Legal representation in summary removals is already infrequent, and the courts have yet to find that noncitizens facing expedited removal have a due process right to counsel, even at their own expense.[58] But lawyers can and should continue to provide representation and advocacy to individuals as soon as they are placed in summary removal procedures.[59] The private immigration bar,

53. *See* Koh*, supra* note 1, at 183 ("It logically follows that the lion's share of reform proposals have focused on improving the law, policies, and resources associated with the immigration courts.").

54. For a thoughtful article on the need for zealous advocacy in the immigration context, see Elizabeth Keyes, *Zealous Advocacy: Pushing Against the Borders in Immigration Litigation*, 45 SETON HALL. L. REV. 475, 480 (2015).

55. *See* Koh, *supra* note 1, at 194 ("the federal courts have generally declined to place meaningful due process or other checks on these forms of removal, allowing them to mushroom over the past decade.").

56. Keyes, *supra* note 54, at 500-01.

57. *See id.* at 518-20.

58. On February 7, 2017, the Ninth Circuit held that individuals in expedited removal proceedings have no Fifth Amendment due process right to counsel (even at the noncitizen's own expense). United States v. Peralta-Sanchez, 847 F.3d 1124, 1138-39, 1142 (9th Cir. 2017). On August 22, 2017, in response to the filing of a petition for rehearing en banc, the Ninth Circuit withdrew its February 7, 2017 opinion. Memorandum, United States v. Peralta-Sanchez, Nos. 14-50393, 14-50394 (9th Cir. Aug. 22, 2017).

59. The presence of counsel during the expedited removal process can have transformative outcomes, with nonprofit surveys suggesting high success rates for clients with attorneys. *See* Brief of Amici Curiae Law Professors, Immigration Scholars and Clinicians in Support of Defendant-Appellant at 6, United States v. Peralta-Sanchez, 847 F.3d 1124 (9th Cir. 2017) (Nos. 14-50393, 14-50394) [hereinafter Brief of Amici Curiae Law Professors, Immigration Scholars and Clinicians] ("From surveys conducted at two different detention centers where more than 35,000 non-citizens were provided

where lawyers are not restricted by programmatic or funding limitations, may play an integral role in providing counsel and advocacy in the shadows of immigration court.[60]

With respect to nonprofit or publicly funded legal representation for deportation defense, programs should consider creating opportunities for legal interventions both in and outside immigration court. Legal interventions and definitions of case success may require revision. For instance, one short-term goal of representation may be to place a client in regular removal proceedings, as opposed to being summarily removed without a hearing.[61] Rapid access to detention facilities is also critical. Attorneys and organizers working to develop emergency response networks to anticipated immigration raids should take account of the wide range of removals when developing infrastructure and process. Success might also need to be measured in terms of gathering information and access, as opposed to preventing removal.[62] Funders—whether in the form of foundations, state or local governments, or private individuals—should consider substantial allocations of funding for detained immigrants facing deportation, and in that context, should leave room for interventions against shadow removals.[63]

The limitations of lawyers and the law may be heightened in this new era, but conversely may give rise to more creative and rebellious ways of lawyering.[64] Many summary removals prohibit individuals from seeking relief and/or seeking judicial review.[65] Discretionary relief from the agencies themselves is less likely, given the agency culture and federal

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legal representation in expedited removal proceedings, removals for those with legal representation dropped at rates of 97% and 99%.").

60. *See* Brenda Montes, *A For-Profit Rebellious Immigration Practice in East Los Angeles*, 23 CLIN. L. REV. 707, 722-23 (2017) (discussing nonprofit funding limitations versus private immigration practice).

61. *See* Marcela Valdes, *Is It Possible to Resist Deportation in Trump's America?*, N.Y TIMES, (May 23, 2017), https://www.nytimes.com/2017/05/23/magazine/is-it-possible-to-resist-deportation-in-trumps-america.html ("Undocumented immigrants have no right to a public defender but often may plead their cases before an immigration judge.").

62. *See, e.g.*, Miriam Jordan, *U.S. Deported Immigrant in 'Dreamer' Program, Lawsuit Says*, N.Y. TIMES, (Apr. 18, 2017), https://www.nytimes.com/2017/04/18/us/dreamer-deported-lawsuit.html?mcubz=0 (describing Freedom of Information Act lawsuit filed in connection with deportation of Deferred Action for Childhood Arrivals recipient Juan Manuel Montes, who was deported without an immigration court hearing).

63. *See* Valdes, *supra* note 61 (discussing fluctuations in funding during Obama Administration).

64. For a recent essay on rebellious lawyering in the context of the immigrant rights movement, *see* Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 CLIN. L. REV. 663, 665, 668 (2017).

65. Brief of Amici Curiae Law Professors, Immigration Scholars and Clinicians, *supra* note 59, at 3-4.

government priorities.[66] Know-your-rights presentations can more regularly incorporate information about summary removals and how community members can prepare themselves for the possibility of a removal without a court date.[67] Beyond community education, the need for organizing moral outrage and mass resistance exists more so now than ever.[68] The undocumented immigrant youth movement has already developed models of resistance and public campaigns to prevent deportation.[69] They have done much of this work alone, seeking control of the narratives (to prevent cooptation of the Dreamer narrative and perpetuation of the good/bad immigrant myth) and, at times, acting independently of mainstream liberal immigration organizations. Some question whether organizing tactics that were effective under the Obama Administration will continue to have impact.[70] New alliances and strategies may be required, which have the potential to lay critical groundwork for a greater swath of the citizenry questioning the moral legitimacy of immigration enforcement as it takes place today.

IV. CONCLUSION

Many observers would agree that turmoil, instability, and inconsistency have characterized the Trump Administration on a range of issues. But the current leadership's steadfast commitment to increasing deportation and detention has remained constant throughout Trump's campaign and in the first several months of his administration. The federal immigration enforcement policies thus call for revising and revamping efforts to resist, both with an eye toward positive change in the future and on reducing the collateral harms that result.

66. *See* Koh, *supra* note 1, at 231 ("Without meaningful prosecutorial guidance, agency officials will place individuals into immigration court's shadows notwithstanding the presence of otherwise compelling humanitarian factors.").

67. *See* Valdes, *supra* note 61.

68. *See id.* (immigrant rights group "helped mobilize rapid responses to deportation. Members were more likely to show up for one another at protest rallies.").

69. *See id.*

70. *See id.* (discussing anti-deportation tactics used by organizers and challenges under Trump Administration).