

Federal lawsuit claims feds lack transparency about Trump immigration policy

By [Karen Kidd](#) | [Jun 16, 2018](#)

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SAN FRANCISCO – A federal lawsuit written by law students on behalf of a legal aid service and a Boston-based immigrants advocacy group accuses two federal agencies of withholding information about how the Trump administration is prosecuting immigration cases.

[Community Legal Services in East Palo Alto](#) and the [National Immigration Project of the National Lawyers Guild](#) claim U.S. Immigration and Customs Enforcement (ICE) and the Department of Homeland Security are "improperly withholding records pertaining to the Trump administration's immigration prosecutorial discretion policies and practices," [the 18-page lawsuit](#) said. Plaintiffs are asking for an injunction to force ICE and Homeland Security to respond to a Freedom of Information Act request file with them in March.

"Prosecutorial discretion – the authority of an agency or an office to decide to what degree to enforce a law against a particular individual – has long been a key component of defendants' immigration enforcement strategy," the lawsuit said. "Since January 20, 2017, however, immigration attorneys and the public have received information suggesting a change in defendants' prosecutorial discretion policies. In practice, defendant appears to have abolished virtually all use of prosecutorial discretion."

Those changes have the potential to affect hundreds of thousands of people but ICE and Homeland Security "have been unwilling to disclose publicly their current prosecutorial policies and procedures," the lawsuit said. "Defendants' lack of transparency around this issue has caused profound fear, anxiety and hardship throughout immigrant communities across the country."

The National Immigration Project of the National Lawyers Guild provides legal assistance and other support in immigrant communities and advocates for the rights of noncitizens. Community Legal Services in East Palo Alto is a nonprofit that provides legal services to low-income people, specializing in immigration, housing, workers' rights, records clearance and consumer protection.

The lawsuit was written by Stanford Law students Anthony Gutierrez and Ruthie Welch under supervision by the law school's Mills Legal Clinic.

The lawsuit was filed in U.S. District Court for the Northern District of California San Francisco Division, the same day the Department of Justice and Homeland Security released a quarterly "alien incarceration" report. That report said 93 percent of "confirmed aliens" in DOJ custody were unlawfully in the U.S. Almost 58,000 "known or suspected aliens" were in DOJ custody at the end of the first quarter this year, including more than 38,000 in Bureau of Prisons (BOP) custody, and 19,688 in U.S. Marshal Service (USMS) custody. "Among the 42,284 confirmed aliens, 39,413 people (93 percent) were unlawfully present," the report said.

"These numbers include a 62 percent unlawful rate among 38,132 known or suspected aliens in BOP custody and a 78 percent unlawful rate among 19,688 confirmed aliens in USMS custody."

Plaintiffs in the lawsuit claim ICE and Homeland Security failed to release records "after instituting sweeping changes" to prosecutorial discretion policies under the Trump Administration, particularly after DHS Secretary John F. Kelly issued a memorandum in February 2017 to enforce a presidential executive order. "Without any clear guidance on prosecutorial discretion, the Kelly Memorandum appears to endorse a system in which virtually all individuals appear equally likely to face deportation, regardless of their age, their community ties, the length of time they have been in the U.S. or the hardship likely to result to U.S. citizens – such as their children – if they are removed," the lawsuit said.