



*Our immigration laws provide numerous categories of conduct that authorize the government to refuse individuals entry and deport those already present, referred to collectively as the “grounds for deportation”. As Congress considers proposals to expand these grounds, this backgrounder describes the over-breadth of the existing laws and the harms they leave in their wake. These proposals fly in the face of core American values.*

## The grounds for deportation<sup>1</sup> violate American values of FAIRNESS & EQUALITY.

- ✓ **The laws violate fundamental American values of fairness and due process by requiring deportation for even minor offenses that involve no jail time.**

**The impact of the laws is often crushingly disproportionate to the criminal conduct:**

- Relatively minor offenses can trigger deportation. Thousands of state criminal offenses are covered by these grounds, including shoplifting<sup>2</sup>, using a false bus pass<sup>3</sup>, and simple drug possession.<sup>4</sup>
- The laws frequently require deportation even for people who never spent a day in jail but were sentenced to a fine, probation, or community service.<sup>5</sup>

**The laws reach back to re-punish someone who served a sentence years ago, rehabilitated, and is now positively contributing to society.**

- There is no statute of limitations in immigration law<sup>6</sup>; almost any offense, at any time, can trigger deportation proceedings. Frequently immigrants such as green card holders are charged as deportable on the basis of a decades-old conviction – long after any criminal sentence has been served.

- ✓ **The laws subject immigrants to the arbitrary, arduous, & costly process of deportation proceedings, in which detention and deportation are often mandatory minimums.**

- The current laws make deportation a mandatory minimum for many people convicted of crimes. This means the conviction not only triggers deportation proceedings, but renders the person ineligible for any defense to deportation.<sup>7</sup>

**The laws hurt the documented AND undocumented** – including green card holders and those who have lived in the U.S. for decades, served in our military, and/or supported a family here:

The laws **authorize ICE to deport those who have been legally permitted to come to the U.S.** and build their lives - to work, study, or seek refuge from persecution - for a mistake that happened at any time in their past.<sup>9</sup>

Anyone who is undocumented (i.e. in the U.S. without legal status) is already deportable. These laws **prevent them from ever being able to change their status**, such as obtain a green card.<sup>10</sup>

### **The Criminal Grounds of Deportation Include<sup>11</sup>:**

“Crimes Involving Moral Turpitude”: a vague, undefined term

“Aggravated Felonies”: a broad group of 21 offenses, many of which are misdemeanors under state laws.

“Controlled Substance Offenses”: includes even misdemeanor drug offenses for simple possession of substances like marijuana<sup>12</sup>.

- Anyone who is deportable can be detained in immigration jail. The laws make detention mandatory for many immigrants convicted of crimes, without access to a bond hearing.<sup>8</sup> Immigrants are frequently detained for months or years, without access to a lawyer, unable to obtain evidence for their case, fighting to remain in the U.S. with their family.

✓ **The laws exacerbate the consequences of an already unfair and discriminatory criminal justice system and undermine reform efforts.**

**These laws are a racial justice issue.**

Because the impact of these laws reflect discriminatory criminal enforcement practices, they disproportionately affect families and communities of color:

- Broken windows policing is increasingly a gateway to deportation. A black person is almost 10 times as likely as a white person to be arrested for loitering, disorderly conduct, trespassing, or marijuana possession, even though black and white individuals use marijuana at similar rates. Although only 7% of non-citizens are black, they make up 20% of non-citizens facing deportation.<sup>13</sup>
- Recent legislative efforts have proposed new grounds based on alleged gang affiliation. These provisions discriminate against young people of color who are already targeted based on national origin, neighborhood, and appearance, frequently based on unreliable gang databases. <sup>14</sup> Youth often have to explain in immigration court that their tattoos or wearing a soccer jersey from El Salvador are not indicative of gang membership.<sup>15</sup>

**These laws undermine criminal justice reform efforts**, such as problem-solving and drug treatment courts. A defendant may be required to plead guilty before completing required counseling or treatment; the plea will make them deportable, even if they successfully complete the program. Even if a conviction has been expunged due to a defendant's good character, it still triggers deportation.

✓ **The current laws destroy families, communities, and the economy.**

**The devastating and avoidable consequences of deportation include:**

- Broken families: tens of thousands of U.S. citizen children have a parent who is detained or deported every year.<sup>16</sup>
- Income and tax revenue loss: after an ICE arrest family income drops 70% on average.<sup>17</sup>
- U.S. citizen children being placed into foster care: approximately 5,000 citizen children in foster care have a detained or deported parent.<sup>18</sup>
- Increased risk of mental health consequences in children: including depression, anxiety, and PTSD. A study of Latino citizen children found PTSD symptoms were significantly higher for children who have had at least one detained or deported parent.<sup>19</sup>
- Higher risk of homelessness and food insufficiency for family members left behind.

**Mass Detention is Mass Incarceration:** Immigration detention is the fastest growing incarceration system in the U.S. Despite broad agreement to reduce mass incarceration, the Trump administration has asked Congress to **increase the average daily detention population to 51,379 people, costing taxpayers \$2.7 billion.**<sup>21</sup> Entire families are detained in immigration jails: children, mothers, and fathers.

**More than half of noncitizens in deportation proceedings are eventually permitted to remain in the U.S.**<sup>24</sup>, making the hardship of detention even more of an arbitrary, unnecessary, & costly punishment for so many people.

**THE CURRENT IMMIGRATION LAWS HAVE DEVASTATING CONSEQUENCES.  
THEY SHOULD BE CONTRACTED, NOT EXPANDED**

## The laws ignore rehabilitation and threaten families.

**Mr. Son** is a 61-year-old green card holder who has lived in the U.S. for almost forty years. He is facing deportation for a simple misdemeanor that happened over thirty years ago and resulted in no jail time, only probation.



In 1979, at the age of 23, Mr. Son joined other members of his family here in the U.S. as a green card holder after his sister petitioned for him. During his early years in the U.S. Mr. Son lived with various family members and worked hard to support himself and his family in a local football helmet factory, as a kitchen staff at a local army base, and as a handyman. A few years later, he became friends with local college students who introduced him to drugs. He pled guilty to simple drug possession, completed a drug program, and never used drugs again. He started attending church where he found a new faith and inspiration.

Mr. Son has since married a U.S. citizen and fathered three U.S. citizen children in the Bay Area. Mr. Son raised his children by the philosophy he himself now lives by, to work hard, trust in God, take responsibility for his mistakes, and give back to the community. Mr. and Mrs. Son are very proud of their three children. The eldest just graduated from medical school and has started her residency, one son works at Microsoft, and the other is a web engineer. The entire family is extremely involved in their church, volunteering at events, and coordinating youth activities. Committed to being a positive force in his community, Mr. Son is also a regular volunteer at a nursing home in San Jose and at a food bank in Sacramento. All of Mr. Son's friends and family live in the U.S.; he has no one back in South Korea.

In 2012, Mr. Son took a brief trip to South Korea. When he returned, he was stopped and interrogated by ICE. Because his decades-old drug conviction triggers deportation, he now faces separation from his family.

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## Endnotes

1. This document uses the terms “deportation” and “deportability” to refer to the technical terms “inadmissibility” and “deportability” in the Immigration and Nationality Act.
2. *See, e.g., Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (2016) (Arizona shoplifting conviction is a “crime involving moral turpitude”).
3. *Michel v. INS*, 206 F.3d 253 (2d Cir. 2000) (using false bus passes was a “crime involving moral turpitude”).
4. Deportations of non-citizens whose most serious conviction was for a drug offense increased 22 percent from 2007 to 2012, totaling more than 260,000 deportations over the same period. Human Rights Watch,

- A Price Too High: US Families Torn Apart by Deportations for Drug Offenses* 5 (June 16, 2015) (collecting stories). Data shows a 46% increase in arrest rates for drug possession between 1990 and 2010. Bureau of Justice Statistics, U.S. Dept. of Justice, *Arrests in the United States, 1990-2010* 1 (2012).
5. See, e.g., 8 U.S.C. § 1101(a)(43) (listing aggravated felony offenses, many of which do not require any sentence to jail time); 8 U.S.C. § 1227(a)(2)(A)(i)(II) (classifying some crimes as deportable offense based on the possible sentence, not actual sentence imposed).
  6. *Matter of A-*, 6 I&N Dec. 540, 547 (BIA 1955) (no statute of limitations).
  7. See, e.g., 8 U.S.C. § 1229b(a)(3) (aggravated felony makes one unable to ask a judge to cancel removal).
  8. See 8 U.S.C. § 1226(a) (any deportable individual may be detained at the discretion of ICE); 8 U.S.C. § 1226(c) (detention is mandatory for some criminal convictions).
  9. This includes green card holders and visa holders - including people with valid student or work visas, refugees, asylees, and others.
  10. See, e.g., 8 U.S.C. § 1182 (a)(6)(A)(i) (any individual present in the U.S. who has not been admitted to the U.S. by immigration authorities is deportable); 8 U.S.C. § 1202(g) (any individual who has remained in the U.S. beyond the expiration of their visa is deportable); 8 U.S.C. § 1182(a)(2) (listing criminal grounds of inadmissibility, which generally prevent undocumented immigrants from obtaining permanent resident status unless they qualify for stringent waivers).
  11. See 8 U.S.C. § 1227(a)(2)(A)(i) (CIMT); 8 U.S.C. § 1101(a)(43) (Aggravated Felonies); 8 U.S.C. § 1227(a)(2)(B) (Controlled Substance Offenses).
  12. *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 571 (2010) (“virtually all drug offenses are grounds for removal”).
  13. ACLU, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests* 9 (2013); ACLU-NJ, *Selective Policing: Racially Disparate Enforcement of Low-Level Offenses in New Jersey* 4 (2015); Jeremy Raff, *The Atlantic*, *The 'Double Punishment' for Black Undocumented Immigrants* (Dec 30 2017).
  14. See e.g., H.R. 3697 “Criminal Alien Gang Member Removal Act” (introduced by Rep. Comstock, R-VA); S.1937 “Border Security and Deferred Action Recipient Relief Act” (introduced by Sen. Flake, R-AZ). See also analysis of H.R. 3697 by the National Immigrant Justice Center, available at: <https://www.immigrantjustice.org/staff/blog/stop-hr-3697-sinister-immigration-bill-gathering-momentum-congress>; Rebecca A. Hufstader, *Immigration Reliance on Gang Databases*, N.Y.U. L. Rev. 671 (2015) (discussing unreliability of gang databases).
  15. Christie Thompson, *The Marshall Project*, *How ICE uses Secret Police Databases to Arrest Immigrants* (August 2017).
  16. Over 150,000 U.S. citizen children had a parent detained or deported in FY2012. Sara Satinsky, et al., *Family Unity, Family Health*, (June 2013), available at <https://www.familyunityfamilyhealth.org>.
  17. American Immigration Council, *U.S. Citizen Children Impacted by Immigration Enforcement 2* (March 2017).
  18. Randy Capps et al., Migration Policy Institute and Urban Institute, *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families VII* (2015).
  19. NYU Law Immigrant Rights Clinic, *Dismantle, Don't Expand: The 1996 Immigration Laws* 8 (2017); Lisseth Rojas-Flores et al., *Trauma and Psychological Distress in Latino Citizen Children Following Parental Detention and Deportation* 352, *Psychological Trauma: Theory, Research, Practice, and Policy* (May 2017).
  20. National Immigrant Justice Center, *Immigration Detention Bed Quota Timeline* (Jan. 2017) (history of immigrant detention bed quota laws).
  21. National Immigrant Justice Center, *The Trump Administration's Deadly Bid to Expand Immigration Detention* (June 2017) (reporting bid for increased detention funding).
  22. Detention Watch Network, *A Toxic Relationship: Private Prisons and U.S. Immigration Detention 2* (Dec. 2016) (relationship between ICE and for-profit private prisons); Human Rights Watch, *US: Deaths in Immigration Detention* (July 2016) (investigating death of 18 migrants in immigration detention).
  23. DHS proposes abandonment of the existing civil detention standards for all “non-dedicated” immigration facilities in favor of minimalistic standards that are less “prescriptive.” See Department of Homeland Security Immigration and Customs Enforcement, *Budget Overview Fiscal Year 2018 Congressional Justification* (May 2017).
  24. Of nearly 200,000 immigration court cases in FY 2015, 53.6% resulted in an outcome favorable to the noncitizen. See Transactional Records Access Clearinghouse, Syracuse Univ., *U.S. Deportation Outcomes by Charge*, [http://trac.syr.edu/phptools/immigration/court\\_backlog/deport\\_outcome\\_charge.php](http://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php).