



**NATIONAL
IMMIGRANT
JUSTICE CENTER**
A HEARTLAND ALLIANCE PROGRAM

For many immigrants, deportation is a mandatory minimum sentence. Fairness would suggest a person is deported only after a judge considers their case. However, many immigrants who have any prior involvement in the criminal justice system never get this essential component of due process: a full and fair day in court.

Mandatory deportation violates American values of due process and unfairly imposes a double punishment

✓ **Mandatory deportation takes away a judge's discretionary power to make a fully-informed decision before tearing a family apart.**

- Prior to 1996, immigrants who committed a crime could go before an Immigration Judge, who would exercise discretion before deciding whether to deport the applicant.
- Under today's laws, judges' hands are tied, preventing them from fulfilling their judicial role. They are frequently prohibited from considering whether an immigrant is a:

Veteran – Sole caregiver to minor US citizen children – **Employer** of U.S. citizens – **Taxpayer** – Long-term **resident** – **Teacher** – **Victim** of domestic abuse – Patient with **severe health problems** – **Grandparent** – Caregiver for **elderly parents** – **Homeowner** – Example of **successful rehabilitation** – **Mother or Father** – **Community leader**

The only factor a judge may consider is a criminal conviction, which may be decades old.

*Based solely on **how a crime is categorized or when it occurred**, thousands of immigrants are subject to mandatory deportation.*

This results in double punishment after a person has already served their sentence. Since there is no statute of limitations, this upheaval can occur years after a person has rehabilitated.

✓ **The “clock stop rule” is a harsh “one strike” rule that ignores rehabilitation and penalizes green card holders who have worked for years to turn their lives around.**

- According to the “stop clock rule”, most convictions within 7 years of entering the U.S. make a green card holder subject to mandatory deportation.¹ In these cases, a judge is forbidden from considering *any positive factors* in the individual's life, including **families ties, recent conduct** or **rehabilitation**.

People affected by this rule include:

The father who came to the U.S. at age 17, was convicted for shoplifting when he was a young man, but has since worked steadily and raised a family.

The woman convicted of drug possession, who completed a drug treatment program, and has been clean ever since. She now has young children and works as a teacher.

✓ **An “aggravated felony” conviction makes deportation a mandatory minimum for undocumented immigrants, asylees, and green card holders alike, regardless of the nature of the sentence.**

- “Aggravated felony” is a vague term that includes 21 categories², encompassing **hundreds** of offenses, many of which are non-violent and misdemeanors, not felonies.³
- A conviction counts as an “aggravated felony” even if the sentence was suspended, the person served no jail time, or their conviction was expunged.

- If someone has an “aggravated felony” conviction, a judge is **prohibited** from considering anything else about their life.
- There is **no statute of limitations**; a person can face mandatory deportation decades after their conviction. This undermines our commitment to second chances and upends the idea of rehabilitation.

✓ **Deportation is a mandatory minimum for undocumented immigrants with almost any involvement in the criminal justice system.**

A broad range of criminal convictions or alleged conduct bar discretionary relief for non-green card holders.

- Thousands of state criminal offenses trigger mandatory deportation for non-green card holders, including shoplifting⁴, using a false bus pass⁵, simple drug possession⁶. This is true even if a person never spent a day in jail but was just sentenced to a fine, probation, or community service.⁷

The standard for recognizing hardship as a basis for relief is extraordinarily high and ignores strong kinship ties beyond a person’s immediate family.⁸

- The already significant hardships of family separation and economic devastation that come with deportation do not amount to “extraordinary and extremely unusual” hardship necessary to be eligible for a waiver.
- If an individual is a caregiver for any other family member – a grandmother or aunt - a judge is unable to consider the hardship that relative will suffer if the immigrant is deported.

✓ **Mandatory deportation ignores the realities of broken windows policing in communities of color, aggressive charging practices, and pressures to plead guilty in the criminal legal system.**

- Because the impact of these laws reflect discriminatory criminal enforcement practices, they disproportionately affect families and communities of color.
- Moreover, once charged, most defendants are pressured to plead guilty, even if they are innocent. The implications of this are especially concerning in a zero-tolerance immigration enforcement administration.

✓ **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.⁹
- Loss of income and tax revenue: family income drops by 70% on average after an ICE arrest.¹⁰
- U.S. citizen children being placed into foster care: approximately 5,000 citizen children in foster care have a detained or deported parent, according to a 2011 report.¹¹
- 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.¹²
- Higher risk of homelessness and food insufficiency for family members left behind.

Deportation is permanent. A judge should be able to look beyond a person’s conviction before expelling them from the country they call home.

Mandatory deportation threatens community leaders.

Ravi Ragbir has lived in the U.S. for over two decades and has been a green card holder since 1994. Ravi is the Executive Director of the New Sanctuary Coalition, a group of over 20 faith-based organizations in New York City that advocates for immigrant rights. Ravi has dedicated his life to the dignity and well-being of immigrants.

Ravi was detained and ordered deported in 2006 because of a single fraud conviction in 2001 for which he already served his sentence. Because his conviction was considered an “aggravated felony”, he was not able to present evidence to the judge about his character and community ties. For almost two years, he was mandatorily detained without bail, including time spent halfway across the country in Alabama, far from his family.

Since his release from immigration detention, Ravi has challenged the immigration judge’s order. He has also become one of the New York’s most prominent immigrant rights activists. He trains hundreds of volunteers to accompany immigrants to ICE check-ins, meets with elected officials to discuss detention and deportation policy, and organizes other immigrants. Ravi was recently recognized with the Immigrant Excellence Award by the New York State Association of Black and Puerto Rican Legislators, given to those who show “deep commitment to the enhancement of their community.” In recognition of his value to the community, Congresswoman Nydia Velázquez introduced a private bill to allow Ravi to remain here.

Despite his commitment to his family and community, and the support by elected officials, Ravi remains under a deportation order. In January 2018, ICE suddenly arrested Ravi and attempted to deport him. He was able to fight this action and continues to fight his deportation, but every day, his family and friends hope that it will not be the last time they see each other.¹³



Ravi and his wife, Amy Gottlieb



Endnotes

1. 8 U.S.C. § 1229b(a)(2) (requiring seven years after lawful admission of continuous residence in the United States to receive cancellation of removal); § 1229b(d)(1) (stopping the calculation of an immigrant's period of continued residence if they commit specified crimes). Together, 8 U.S.C. § 1229b(a)(1) and § 1229b(d)(1) are known as the "clock stop rule," because certain offenses, including minor drug convictions, stop the calculation of the person's continued residence period for immigration relief purposes, denying them the chance to apply for cancellation of removal, a discretionary form of relief granted by an Immigration Judge.
2. 8 U.S.C. § 1101(a)(43) et seq. (listing aggravated felony offenses, many of which do not require any sentence to jail time).
3. Immigrant Legal Resource Center, *Quick Reference Chart for Determining Key Immigration Consequences* (Jan 2016), available at https://www.ilrc.org/sites/default/files/resources/california_chart_jan_2016-v2.pdf.
4. *See, e.g., Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (2016) (Arizona shoplifting conviction is a "crime involving moral turpitude").
5. *Michel v. INS*, 206 F.3d 253 (2d Cir. 2000) (using false bus passes was a "crime involving moral turpitude").
6. 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* (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).
7. *See e.g.*, 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).
8. 8 U.S.C. § 1229b(b)(1)(D) (requiring an immigrant to prove that their deportation would cause exceptional and extremely unusual hardship to their citizen or legal permanent resident spouse, parent, or child).
9. Over 8,260 parents of U.S. citizen children were ordered deported in the first half of 2017. U.S. Department of Homeland Security, *Deportation of Aliens Claiming U.S.-Born Children*, available at <https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Deportation%20of%20Aliens%20Claiming%20U.S.%20Born%20Children%20-%20First%20Half%20CY%202017.pdf>.
10. American Immigration Council, *U.S. Citizen Children Impacted by Immigration Enforcement 2* (March 2017).
11. Race Forward, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* (2011), available at: <https://www.raceforward.org/research/reports/shattered-families>.
12. 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*, *Psychological Trauma: Theory, Research, Practice, and Policy*, May 2017, at 352.
13. Additional details of Mr. Ragbir's case are on file with his attorney, Alina Das.