
Forced Apart: US Deportations Violate Human Rights

Following changes to US immigration law in 1996, hundreds of thousands of families throughout the United States have been forced apart by harsh and inflexible deportation policies. Legal immigrants who have lived in the country for decades with their families are summarily deported if they have been convicted of a crime, even a minor one. Immigration judges are not able to decide whether deportation would be unduly punitive given the harm to their families, or in light of their contributions and connections to their community inside the United States.

This is an executive summary of *Forced Apart*, a report by Human Rights Watch.

According to US Citizenship and Immigration Services, 672,593 immigrants have been deported for crimes since the 1996 laws were passed. Based on the 2000 census, we estimate that those immigrant deportees (many of whom were lawful permanent residents) left behind at least 1.6 million spouses and children, many of whom are US citizens.

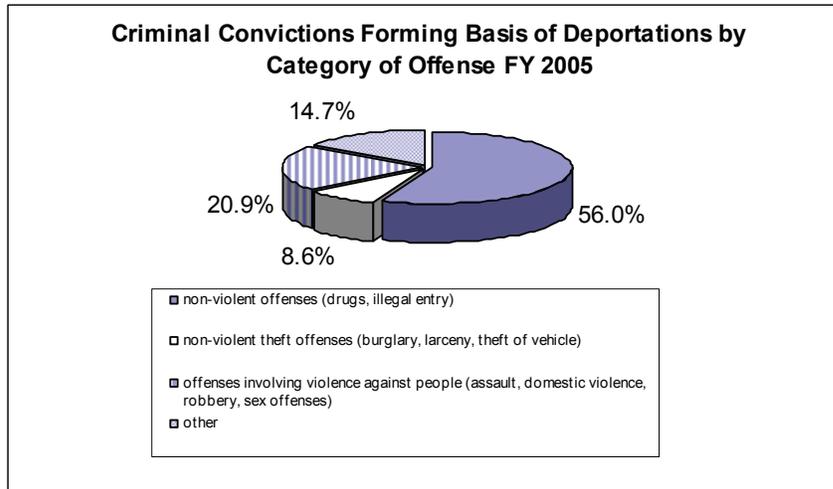
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Who is Deported?

On average, 74,000 immigrants have been deported from the United States every year between 1997 and 2005 (the most recent year for which data is available). The annual number of deportees has risen each year, predictably jumping the most (61 percent) between 1996, before the new laws took effect, and 1998, when they had been in place for a full calendar year.

Newly public data on the underlying convictions for deportations in fiscal year 2005, which were released by Immigration and Customs Enforcement (ICE) at the end of 2006, show that 64.6 percent of immigrants were deported for non-violent offenses, including non-violent theft offenses; 20.9 percent were deported for offenses involving violence against people; and 14.7 percent were deported for unspecified “other” crimes.

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Source: Mary Dougherty, Denise Wilson, and Amy Wu, Department of Homeland Security, Office of Immigration Statistics, *Immigration Enforcement Actions: 2005*, table 4, November 2006, p. 5.

A Case Study

Antonio Cerami entered the United States at the age of 12 as a lawful permanent resident. In 2003, he decided to take his young son and wife on a three-week trip to Italy for a niece's wedding. Upon their return to Chicago O'Hare airport, Antonio was taken into custody and eventually deported back to Italy for a conviction he had received 19 years earlier, for attempting to rob a pizza parlor. Antonio had been sentenced to six years in prison, but had been released after three years for good behavior.

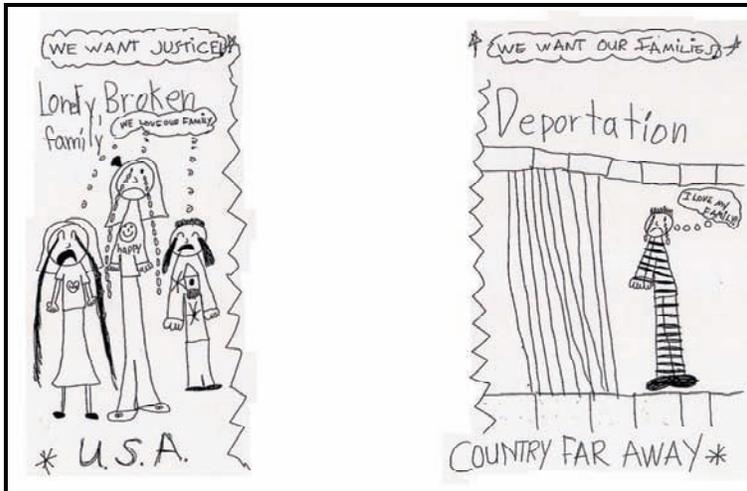
After Antonio was ordered deported, his wife asked the immigration judge not to carry out the order, but the judge could not consider her pleas: "When I begged the judge not to take Tony away, the judge said, 'You have a job, you can work.' Well what happened to America and family unity? What happened to that? Does that not mean anything? No child left behind? Mr. Bush? We pay taxes. My husband paid taxes. He was here for 30 years [before his deportation] It was a very traumatic experience for my whole family, but mostly for my kids."

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Contrary to popular belief, US deportation policies do not solely target undocumented immigrants—they apply to long-term lawful permanent residents (green card holders) as well. When these members of American society are deported, their absence is felt because shops close, entrepreneurs lose their business partners, tax

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revenues are lost, and most tragically US citizen and lawful permanent resident children and spouses are forced to confront life without their fathers, mothers, children, husbands, and wives.



Drawing by a child facing separation from her father due to deportation
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Families have had to sell their homes, children and spouses have had to undergo psychological treatment, and relatives have had to try to keep their families unified in spirit, even when international borders, and most fundamentally US laws, keep them physically apart. Refugees have also been sent to places where they fear persecution, even though the crimes they have committed are not sufficiently serious to warrant stripping them of refugee protection.

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Not only have deportation laws become more punitive—increasing the types of crimes that can permanently sever an immigrant’s ties to the United States—but there are fewer ways for immigrants to appeal for leniency. Hearings that used to happen in which a judge would consider immigrants’ ties to the United States, most especially their family relationships, were stopped in 1996 for those convicted of a long list of crimes. Therefore, family relationships or other ties to the United States receive no consideration and cannot influence a judge’s deportation decision.

In 1996 judges were stopped from considering immigrants’ ties to the United States, most especially their family relationships, before finalizing a deportation order.

Deportation is a necessary part of every country’s enforcement of its immigration laws. But the exercise of the power to deport should be governed by fair laws tailored to protect legitimate national interests. It may be reasonable, for example, to deport a newcomer to the US

who engages in terrible crimes after he has served his sentence. But many immigrants who are being deported from the United States are a far cry from the worst and most violent offenders. Non-citizens have been forced into permanent exile for petty shoplifting offenses, for receiving stolen property, and for possessing small amounts of narcotics. As shown in the case of Mr. Cerami, the 1996 laws have also had sweeping retroactive effects: a criminal offense committed in the 1980s that did not trigger deportation at that time can now render a non-citizen deportable, even if he has served a criminal sentence and remained law abiding for years.

Human Rights Law: a Balanced Approach

In the report *Forced Apart*, Human Rights Watch charts the various devastating ways in which changes to immigration laws passed a decade ago have impacted America's families. We reiterate a theme that US President George W. Bush has repeatedly recognized, including in an April 9, 2007 statement about proposed comprehensive immigration reform legislation: "[F]amily values d[o] not stop at the Rio Grande River."

Human rights law recognizes that the privilege of living in any country as a non-citizen may be conditional upon obeying that country's laws. However, a country like the United States cannot withdraw that privilege without protecting the human rights of the immigrants it previously allowed to enter. Human rights law requires a fair hearing in which family ties and other connections to an immigrant's host country are weighed against a country's interest in deporting him. Unfortunately, that is precisely what US immigration law fails to do—it gives no opportunity to immigration judges to balance the individual's crime against his or her family relationships, other connections to the US such as military service or economic ties, or fear of persecution in the country of origin.

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In this respect, the United States is far out of step with international human rights standards and the practices of other nations, particularly nations that it considers to be its peers. Many other constitutional democracies require deportation hearings to weigh such defenses to deportation in their domestic practices. In fact, in contrast to the United States, all of the governments in western

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Europe (except Luxembourg) offer non-citizens an opportunity to raise family unity concerns, proportionality, ties to a particular country, and/or other human rights standards prior to deportation.

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Human Rights Watch calls on the President and Congress, as a part of comprehensive immigration reform or other legislation, to reinstate hearings that would allow immigrants facing deportation the chance to ask a judge to allow them to remain in the United States when their crimes are relatively minor and their connections (especially their family ties) to the United States are strong. We ask Congress to take a second look at the kinds of crimes that render people deportable in order to prevent permanent and mandatory banishment from the United States for relatively minor non-violent crimes like theft or drug possession. Providing for proportionality in deportation and protecting family unity are essential to a just and fair immigration policy, and this cannot be accomplished without amending US immigration law to allow for relatively simple balancing hearings.

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Recommendations

To the United States Congress

Amend immigration laws to:

- Provide a hearing before an impartial adjudicator in which an individual non-citizen's interest in remaining in the United States is weighed against the US interest in deporting the individual.
- Ensure that the following are counted in favor of the immigrant in the hearings: Family relationships in the United States; the best interests of any children in the family; lengthy legal presence in the United States; evidence of rehabilitation; investment in the US community through business, military service, property ownership, and/or tax payments.
- Protect from deportation individuals whose lives or freedom would be threatened if returned unless they have been convicted of a particularly serious crime and are dangerous to the community of the United States within the meaning of the 1951 Refugee Convention.

- Ensure that only non-citizens who have committed serious and/or violent crimes (not misdemeanor crimes), for which they have served an actual prison term (not probation or drug treatment sentences) are subject to deportation.
- Ensure that offenses that did not trigger deportation at the time they were committed are not used to deport immigrants now.
- Allow state and federal criminal judges to pass a sentence of incarceration or another form of criminal punishment with “JRAD” (“judicial recommendation against deportation”) upon non-citizens convicted in their courts.

To the Department of Homeland Security

- Publish statistics annually that reveal what criminal convictions form the basis for all removals from the United States on criminal grounds, the immigration status (i.e. lawful permanent resident, asylee, etc.) of all persons removed on criminal grounds, and whether non-citizens removed have family relationships with US citizens or lawful permanent residents.

To download free of charge the full text of *Forced Apart*, please visit Human Rights Watch’s website at:
<http://hrw.org/reports/2007/us0707>.