

END EXTREME PUNISHMENT FOR “AGGRAVATED FELONIES”

Over the past two decades, Congress has severely curtailed the discretion of immigration judges to evaluate cases on an individual basis and to grant relief to deserving immigrants and their families. Our system, amended in 1996 by harsh provisions of the Illegal Immigration Reform and Immigrant Responsibility Act, has insurmountable hurdles that prevent many individuals from obtaining legal status, or strip them of the legal status they already have for criminal offenses that may have been minor, occurred many years previously, and for which they have already been held accountable. The law blocks these individuals from presenting their case to an immigration judge before facing detention and permanent exile. Legal permanent residents, such as green-card holders, face a particularly harsh and unfair reality under immigration law. Anyone with an "aggravated felony" conviction is automatically barred from seeking relief from deportation. It doesn't matter how old or minor the offense is, or what the person has done with his or her life since then.

BACKGROUND: THE AGGRAVATED FELONY DEFINITION

The government classifies certain criminal convictions under immigration law as “aggravated felonies.” This classification is one of the most powerful legal tools that the government uses against a noncitizen because it triggers the harshest immigration penalties. Because of overly-aggressive use of this classification by the government, an immigrant’s crime doesn’t have to be either aggravated or a felony to be designated an “aggravated felony.” If the government decides that someone’s crime is an “aggravated felony”:

- The person will face almost certain deportation, regardless of individual circumstances and without consideration that they have already served their time;
- The government will permanently bar the person from ever returning lawfully to the U.S.;
- Unless the person has a green card, the government will deny an “aggravated felon” a hearing in any court and deport her/him under special “expedited removal” procedures;
- Even if a person has a green card and gets a hearing before an immigration judge, the judge’s power is severely limited to simply ordering an “aggravated felon” deported. The judge cannot consider individual circumstances, regardless of how long the person has been in this country, how long ago or how minor her/his offense was, and the consequences to deportation to the person or her/his family;
- The person will be detained, sometimes for years until she/he is deported;
- The power of the federal courts to oversee and correct the actions of the government is severely limited when the person has been classified as an aggravated felon.

THE PROBLEM: OVERBROAD DEFINITION OF AGGRAVATED FELONY

Before 1996, only the most serious crimes could be defined as “aggravated felonies” under immigration law. However, in 1996, the government significantly expanded what crimes could fall under this definition. It now includes even minor misdemeanor offenses (sometimes 20 years old) that are neither “aggravated” nor “felonies. The government uses this expanded version of the law very aggressively to classify as many immigrants as possible as “aggravated felons.” Offenses that have been found to be aggravated felonies under the current definition include:

- Misdemeanor theft of items of minimal value such as a \$10 video game, \$15 worth of baby clothes, or tire rims from an automobile

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- Writing a bad check for \$1500 worth of construction supplies
- The sale of \$10 worth of marijuana or pointing out a suspected drug seller to a potential buyer
- Allowing friends to use a car to commit a burglary
- Pulling the hair of another during a fight over a boyfriend

The government also changed the rules so that these changes reached back in time to apply to all convictions, no matter when they were received. Changing the rules in the middle of the game is un-American and violates basic notions of justice. Given this change, untold numbers of immigrants have been made deportable for convictions that were not a basis for deportation when they were committed. All of these aggravated felonies subject immigrants to automatic detention and deportation regardless of their individual circumstances and without consideration that they have already served their time, resulting in a disproportionately harsh double punishment. Consequently, the government has deported thousands of immigrants without the due process that they deserve and that is the cornerstone of the American justice system.

THE SOLUTION: Congress must narrow the “aggravated felony” definition under immigration law so that it reflects common sense, proportionality, and the American system of justice and not mandate lifetime exile for an overly broad range of offenses, including minor and old convictions.

DID YOU KNOW?

- In the last 15 years, about 300,000 non-citizens were ordered deported from the U.S. after they had been categorized as “aggravated felons.”
- In the past ten years, more than 40% of green card holders who faced deportation as “aggravated felons” lived here legally for more than 15 years.
- In 2006, the majority of all individuals classified as aggravated felons were deported without a hearing, with low-level government clerks, not judges, making the determination.

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