LIMIT REMOVAL BASED ON LONG AGO CONDUCT

Congress must limit the authority of DHS to deport immigrants for long ago conduct. DHS' practice of permanently holding immigrants under the threat of deportation for decades-old offenses violates basic notions of fairness long recognized in the law.

BACKGROUND: LACK OF A STATUTE OF LIMITATIONS IN THE IMMIGRATION LAW

Under "statutes of limitation" in both the criminal and civil contexts, the law generally limits the time during which the government may bring criminal or civil charges against an individual. For example, under federal criminal law, an individual may generally not be prosecuted or punished for a non-capital offense unless charges are brought within five years (18 U.S.C. § 3282). Similarly, under non-criminal federal law, an action or proceeding may generally not be brought against an individual for the enforcement of any civil penalty or forfeiture unless commenced also within five years (28 U.S.C. § 2462). Nevertheless, immigrants face deportation for conduct that happened many years ago because federal immigration authorities have deemed that the lack of a "statute of limitations" in the Immigration and Nationality Act itself allows them to reach back in time as far as they want to deport people.

THE PROBLEM: THE THREAT OF DEPORTATION NEVER GOES AWAY NO MATTER HOW LONG AGO THE CONDUCT AT ISSUE

DHS' bringing of deportation charges against immigrants long after the conduct in question violates basic notions of fairness and creates tremendous hardship for immigrants – many of whom are long-time lawful permanent resident immigrants, refugees or asylees – and their families, employers, employees, communities, and the United States as a whole. Where the conduct resulted in a criminal conviction, the person may have long since finished the sentence that the criminal judge felt was fair. In the intervening time, many such immigrants have established productive and law-abiding lives – gone to school, raised families, bought houses, built businesses, paid taxes and become active in their communities. And, as the years passed, many have even applied to renew replace their green cards or other immigration documents or gone through DHS inspection when returning to the United States after vacations or business trips abroad – all without DHS taking any action against them.

As one presidential immigration commission has stated: "That it is wrong to keep the threat of punishment indefinitely over the head of one who breaks the law is a principle deeply rooted in the ancient traditions of our legal system."[1] Nevertheless, even though the federal civil statute of limitations provision at 28 U.S.C. 2462 has been described as the "catch-all" statute of limitations that applies where Congress has not otherwise provided for a limitations period in a statute (*Fed. Election Comm'n v. Nat.'l Republican Senatorial Comm.,* 877 F. Supp. 15, 17 (D.D.C. 1995)), the federal government and courts have nevertheless declined to apply 28 U.S.C. 2462 to immigration removal proceedings because the Immigration and Nationality Act does not itself include any express statute of limitation provision. One court, which took this position, stated:

[1] "Whom We Shall Welcome" (President's Commission on Immigration and Naturalization Report, 1953), p. 197.

For more information, please contact:
Angie Junck: Immigrant Legal Resource Center, ajunck@ilrc.org, (415) 321-8558
Paromita Shah: National Immigration Project of the National Lawyers Guild, paromita@nipnlg.org, (202)271-2286
Alisa Wellek: Immigrant Defense Project, awellek@immigrantdefenseproject.org, (212)725-6421
Ann Benson: Washington Defender Association, abenson@defensenet.org, (360) 385-2538

"Despite our discomfiture with the prolonged delay in initiation of removal proceedings [in this case], . . . the task of creating a limitations period lies with the legislature, not the judiciary" (*Restrepo v. Attorney General*, 617 F.3d 787, 801 (3d Cir. 2010)).

THE SOLUTION: Congress must clarify that the general federal civil statute of limitation applies to the bringing of removal charges based on long ago conduct, or enact an immigration-specific statute of limitation.

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