

LEARN, SHARE, FIGHT BACK:

THE SHORT IMMIGRATION GUIDE TO HOW ARRESTS & CONVICTIONS SEPARATE FAMILIES



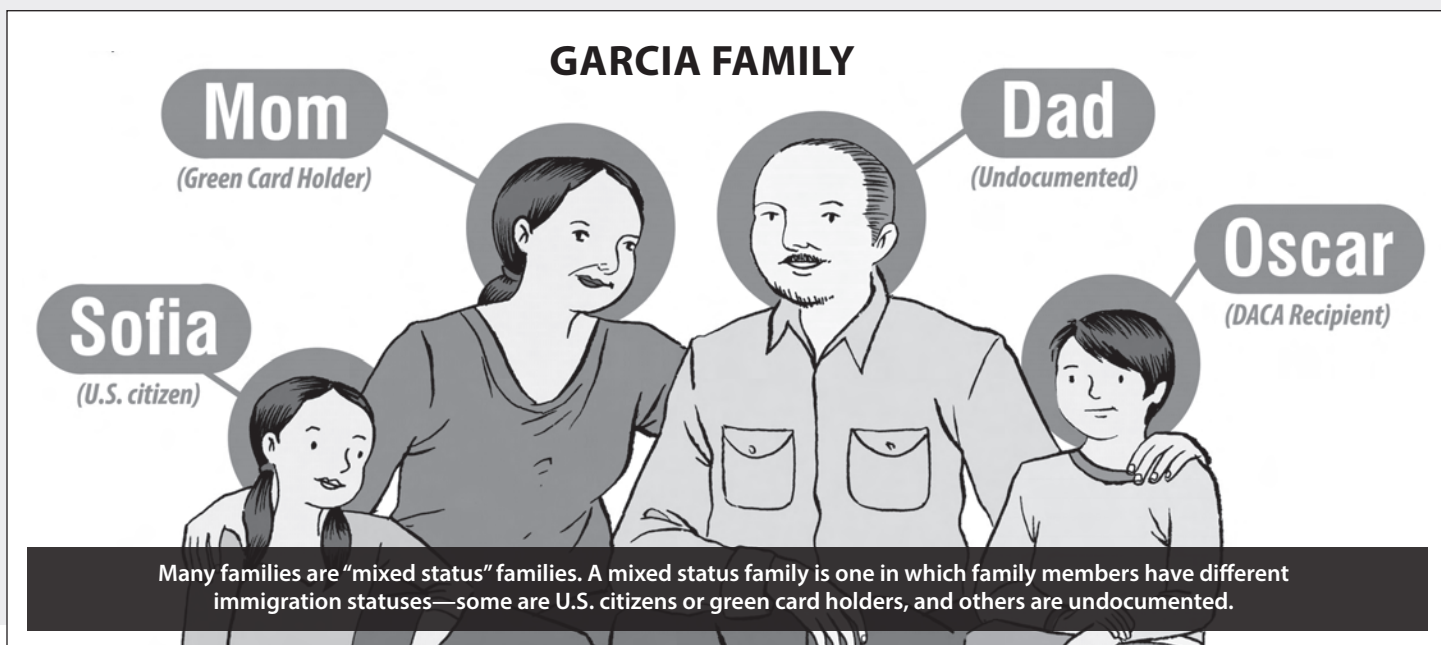
FIX '96
END MASS CRIMINALIZATION

Many of us know family members and friends who have been detained and deported because of arrests and convictions. Learn about what changes need to be made to our immigration laws to fight back and keep our families together.

LIVING WITH OUR IMMIGRATION LAWS

Who is affected by our immigration laws?

- Anyone who is not a U.S. citizen. For example, lawful permanent residents, or “green card holders”, DACA recipients, those with temporary protected status (TPS), refugees, AND people without papers.
- This means that if you are not a U.S. citizen, you can be deported, even if you have a green card.



How can your criminal record affect you and your family’s future?

TIP: Consult an experienced immigration attorney.



- You can face detention and deportation, even if you have papers.
- You can be detained without bond.
- You can be prevented from getting papers through a family member, an employer, and most likely through immigration reform.
- You may be ineligible for many forms of immigration relief, including cancellation of removal and asylum.
- You may face many obstacles to getting papers to return legally to the United States. You may also get federal prison time if you come back to the U.S. without papers

TIP: Although the consequences of arrests and convictions can be serious, you might be able to fight your case in court or in other ways.



Immigration judges often cannot consider the individual circumstances of your case and must order your automatic detention and deportation, even if you have a green card, TPS, DACA or are a refugee.

Haven't people who are arrested or convicted of crimes always been locked up and deported?

There are many reasons people end up being arrested or convicted. Our laws and enforcement systems unfairly target and punish people of color. The U.S. locks up more people than any other country in the world. And because of drastic changes made to the immigration laws in 1996, the U.S. is able to deport more people. More people have been deported since 2000 than in the last 100 years combined.



We should all be held accountable for our mistakes, but everyone deserves a second chance and the right to a fair day in court.

How can we make sure that all members of our community have an opportunity to go before an immigration judge who can consider the individual circumstances of their case before deciding whether they should be deported?
see pages 5-7

What kinds of arrests or convictions can count against me?

(Note: Sometimes just an arrest or charges can lead to deportation.)

There is a long list of convictions that can count against you, including many felonies and misdemeanors. People are often surprised that even some of the following examples can prevent you from getting or keeping your papers and lead to deportation:

- Shoplifting
- Possessing a pill of ecstasy
- Jumping a subway turnstile
- Getting in a bar fight
- Writing a bad check
- Selling \$10 worth of marijuana
- Prostitution
- Using someone else's papers to work

Immigration law puts crimes into **categories** that can impact whether you can get papers, or can keep the ones you already have. Some of the most common categories are:

AGGRAVATED FELONY

This is a broad immigration category that Congress keeps expanding to include more convictions, including some misdemeanors where people never served even one day in jail.

This category is one of the most powerful tools to deport people, including those with papers, since most people with these convictions face mandatory detention and deportation.

A judge has no power to grant a pardon or a waiver from deportation in these cases, regardless of your family ties, business ties or how long you have been in the United States, except in very rare circumstances (e.g. Convention Against Torture relief).

CRIME INVOLVING MORAL TURPITUDE

This is a broad immigration category that covers many types of convictions, including misdemeanors. There is no official definition of a crime of moral turpitude so it is often difficult to determine what might constitute one.

Some examples include theft, fraud, drug, assault, and some driving related offenses.

These convictions can often prevent people from getting or keeping their papers, and can lead to deportation.

DRUG OFFENSES

Almost all drug convictions, even when people received treatment and had their case dismissed, can hurt your ability to get or keep your papers and can lead to deportation.

EVERYTHING ELSE

There are many other categories of convictions or arrests, even if they didn't result serving time in jail, that can hurt your ability to get or keep your papers and can lead to deportation. For example, our laws can deport someone if an immigration agent believes you deal marijuana. Also, these categories are so big that showing up in a police or government database could lead to deportation, even if you never committed a crime.

HOW MIGHT IMMIGRATION REFORM AFFECT THOSE WITH CRIMINAL CONVICTIONS OR ARRESTS?

Although Congress has not passed immigration reform and there is no new immigration program, it is important to know how immigration legislation being considered by Congress may affect you if you have a criminal conviction or have been arrested.

Immigration reform affects all immigrants, including those living in the country with “papers” (such as green card holders) and people who are undocumented.

Different immigration bills have been introduced in Congress. Each immigration proposal is different and will likely have many parts. Some parts may help some undocumented people get on a path to citizenship. Many people may not qualify for the path to citizenship or legalization. Other parts will make life very difficult for immigrants by increasing border enforcement and deportations. It is also very likely that new immigration legislation will make it more difficult for immigrants, including legal permanent residents, to stay in the United States if they have ever been arrested and convicted.

How might immigration legislation affect those with arrests and convictions? These are some ideas about what could happen IF a law is passed based on current proposed legislation.

Some immigrants with arrests or convictions will not be able to get on the path to citizenship, including those with:

- Multiple misdemeanors (except minor traffic offenses);
- One felony;
- One aggravated felony, or other offenses.

Example: Ivon was picked up in a workplace raid and convicted of using false documents to work, a felony in Arizona. Because of this conviction, she will likely not be eligible to get legal status.

The path to citizenship will likely be very long, and there will be many requirements that people will have to meet along the way. This means that even those who are able to start the process may not be able to get a green card or citizenship, if they are later arrested and convicted.

Example: David is granted some kind of legal status under a new immigration law but will have to wait ten years for a green card. Some years later he is arrested after getting into a fight with his neighbor. He may now be disqualified from getting a green card.

Many of the bills create new crimes that will trigger deportation.

Examples: Nearly all bills create a new crime of “smuggling and harboring” someone who is undocumented. This means that some proposals would allow a green card holder who drove his undocumented sister to the grocery store to be convicted and deported.

Some bills would also make it easier to be deported for working without proper documentation.



Many of the bills create new reasons for the government to deport you, even if you are a green card holder and have lived in the country for many years. In immigration law, these are called “grounds of deportability.”

Example: Max, who is now 40 and has a green card, but was in a gang when he was 20, could be deported. Even though he now owns his own business and has a family here.

Many of the bills create new immigration related crimes and increase the number of offenses that are categorized as “aggravated felonies.” These will lead to mandatory detention and deportation.

Example: Under some bills, a second DUI or a subsequent DUI is an aggravated felony. These bills would also make it a crime to live in the United States without papers.

Many of the bills increase police’s ability to enforce immigration law.

Examples: Under some bills, police departments in every part of the United States can decide whether they want to act as immigration agents, similar to Arizona’s SB 1070.

Although it’s not clear which immigration bill will become law or when that will happen, it is important to think about the impact immigration legislation will have on our entire community. Consider asking the following questions:



TIP: *If an immigration bill becomes law, it will be very important for you to obtain a copy of your criminal history so that an attorney can help you understand how the law will affect you.*

HOW TO GET INVOLVED AND FIGHT BACK

For more information about knowing your rights and how to create a family plan please see the toolkit created by Casa de Maryland, Detention Watch Network and the National Immigration Project.

Know Your Rights Materials English –
nationalimmigrationproject.org: Casa de Maryland Know your Rights

Know Your Rights Materials Spanish –
nationalimmigrationproject.org: Casa de Maryland Conozca Sus Derechos

How can you fight back?

Another way to protect your family and community is to fight back against the laws and policies that separate our families. There are many ways you can make an impact in your community.

You can:

- Organize direct actions like the “Not One More Campaign”: notonemoredeportation.com
- Launch a story telling project like the “Education not Deportation” campaign: unitedwedream.org
- Build a campaign with your community like the “Trust Act” campaign to fight against federal immigration reform policies that make it easier to deport those with criminal convictions and arrests: catrustact.org
- Build a detainer campaign like the “New Orleans Right to Remain” campaign to pass state legislation that would end the way police can work with ICE: nowcrj.org

You can always do a combination of these methods.



Here is one example of a plan the community developed after losing their friends and neighbors, Mr. and Mrs. Garcia, to deportation. Mr. Garcia is undocumented and Mrs. Garcia is a greencard holder who has lived in the United States for six years.



Mom and Dad got in an argument one night over Oscar's bad grades on his report card.



The neighbors heard the fighting and called the police.



When the police arrived, Mr. and Mrs. Garcia tried to explain the situation, but the police didn't understand Spanish. The police arrested and detained both of them on domestic violence charges. Their lawyer advised them to plead guilty so they could get out of jail and return to their family quickly.



But the local jail contacted ICE who instructed the jail to keep the Garcias until they could pick them up and place them in immigration detention.



Inside immigration detention, Mrs. Garcia appeared before the immigration judge, but the judge wasn't able to consider the circumstances of her case: two children, including a U.S. citizen, and a lawful U.S. resident for 6 years. The judge ordered her mandatory deportation.

1

GOAL

- Friends of the Garcia family want to help so they decide to take action to change the policies that are tearing families apart.
- They decide that they want to focus on making sure judges can look at the individuals circumstances of a case before ordering someone's automatic deportation.
- They also decide that they want to stop police from having to tell ICE when they hold immigrants. This is known as ending a local detainer policy. If police didn't call ICE to tell them that they had arrested the Garcia parents, they would not be facing automatic deportation.

2

TARGETS

- The community and allies determine that the federal immigration bills need to be changed. They decide to target members of Congress and demand that judges be able to consider the individual circumstances of someone's case before automatically deporting them.
- They also decide to convince the Sheriff that police don't have to inform ICE when they are holding an immigrant.

3

TACTICS

- They meet with their members of Congress to address their concerns about judge's discretion.
- They ask their local pastors to join their effort and help them with their campaign.
- They educate their community about what is happening to immigrant families so that more community members would join their effort.
- They organize a prayer vigil in front of the immigration court to show the town that families are being deported without judges being able to consider their cases.
- They meet with their city council members to educate them on the role of local police and how ICE detainers make the community trust police less.

4

TIMELINE

- They decide to start their campaign immediately in order to influence the immigration bills moving through Congress now.

TOOLKITS AND TRAINING MATERIALS

Challenging ICE Hold Requests/Immigration Detainers – All in One Guide to Defeating ICE Hold Requests – is a manual for organizers on how to prevent local law enforcement from holding immigrants for ICE.

ilrc.org: Challenging ICE hold requests/immigration detainers

Deportation 101 – is a training tool that educates and builds the capacity of immigrant and criminal justice service providers, immigrant leaders, and community organizers to respond to their members' and clients' interactions with the criminal justice system. It functions as a free, 1-2 day-long seminar on the criminalimmigration system, accompanied by a 1500+-page manual developed jointly in 2005 by IDP and Families for Freedom.

Detention Watch Network and National Immigration Project, who contributed to an expansion of Deportation 101 in 2007, now also serve as important partners in developing and presenting these trainings.

nationalimmigrationproject.org: Deportation 101

Infographics – Here are a few stories of families in our community who call the United States home.

Some are here legally, some live in the shadows; and others have been deported or kept from joining their families in the United States.

immigrantjusticenetwork.org: Lundy's story

immigrantjusticenetwork.org: Harold's story

immigrantjusticenetwork.org: Ivon's story

immigrantjusticenetwork.org: Roland's story

immigrantjusticenetwork.org: Hugo's story

Websites

This guide was originally created in partnership with Cathy Montoya and the CAMBIO campaign. It has been updated by IJN in September 2016, with love and appreciation to Cathy for her many contributions to this work.



The Immigrant Justice Network is working to ensure that federal immigration reform includes policies that are fair and just. Reforms must guarantee that all aspiring citizens have their individual cases considered in order to have a fair chance at staying on the path to citizenship. Fundamental due process protections must be strengthened.



National Immigration Project: nationalimmigrationproject.org

Immigrant Defense Project: immigrantdefenseproject.org

Immigrant Legal Resource Center: ilrc.org