

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300
Email: hrwnyc@hrw.org

HUMAN
RIGHTS
WATCH

www.hrw.org

U.S. PROGRAM

Jamie Fellner, Director
Jennifer Daskal, Senior Counsel on
Counterterrorism
Thomas Gilchrist, Associate
Ashoka Mukpo, Associate
Alison Parker, Senior Researcher
Sarah Tofte, Researcher

ADVISORY COMMITTEE

Catherine Powell, Chair
Catherine Albisa
Roland Algrant
Preeti Bansal
Ann Beeson
Stephen Bright
Tanya Coke
David Cole
Mike Farrell
Vanita Gupta
Lulie Haddad
Wendy Patten
Bill Quigley
Bruce Rabb
Steven Shapiro
Alexandra Stanton
Julie Stewart
Dorothy Thomas
Robin Toone

Human Rights Watch

Kenneth Roth, Executive Director
Michele Alexander, Development &
Outreach Director
Carroll Bogert, Associate Director
Barbara Guglielmo, Finance &
Administration Director
Peggy Hicks, Global Advocacy
Director
Iain Levine, Program Director
Andrew Mawson, Deputy Program
Director
Dinah PoKempner, General
Counsel
Aisling Reidy, Senior Legal Advisor
James Ross, Legal & Policy Director
Joe Saunders, Deputy Program
Director
Jane Olson, Chair, Board of
Directors

Testimony by Alison Parker, Esq. Senior Researcher, U.S. Program, Human Rights Watch House Committee on Foreign Affairs, Subcommittee on the Western Hemisphere, Deportees in Latin America and the Caribbean July 24, 2007

Mr. Chairman, members of the Committee, thank you for holding this briefing and for inviting me to testify on the subject of immigrants deported from the United States because of criminal convictions.

Today's briefing focuses mostly on the effects that these deportations have had on receiving countries in Latin America and the Caribbean. However, my testimony will shed light on the effects felt *inside* the United States. My report on this subject, *Forced Apart*, was publicly released last week and is available on Human Rights Watch's website.

I would like to begin my remarks with an example.

Joe Desiré, originally from Haiti, signed up for the US military in 1970. At that time, no-one asked Joe if he was an immigrant. A lawful permanent resident, or green card holder, Joe served his adopted country for 4 years. Now a 52-year-old veteran with four US citizen sons, two of whom are in the military themselves, Joe faces mandatory deportation because he was convicted of possession and sale of small amounts of crack cocaine in the mid-90s, for which he spent 16 months in prison.

Some 672,593 immigrants in the US — many of whom, like Joe, were legal residents — have been deported from the country under 1996 legislation that requires mandatory deportation of non-citizens convicted of a crime after they have served their sentence. It does not matter whether the non-citizen has lived here legally for decades, built a home and family, ran a business, or paid taxes. And these laws do not apply only to serious crimes, but also to minor offenses.

Human Rights Watch estimates that 1.6 million adults and children, including US citizens — have been separated from their spouses and parents because of this legislation. Families have been torn apart because of a single, even minor misstep, such as shoplifting or drug possession.

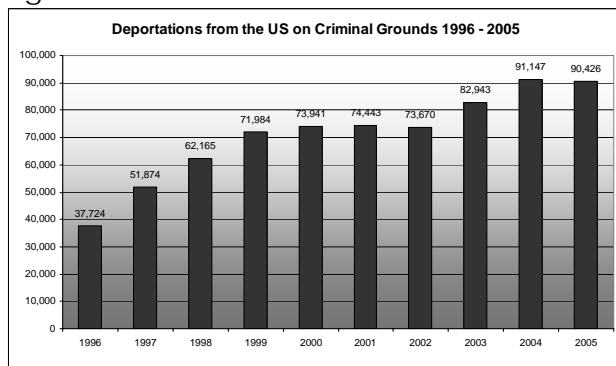
Certain immigrants, for example, immigrants convicted of selling drugs with a 5-year sentence, are subject to deportation without consideration of the fact that they would be returned to persecution. This is the case under US law despite the fact that under the Refugee Convention (a treaty binding on the United States), only refugees who have been convicted of a “particularly serious crime” and who “constitute a danger to the community” of the United States may be returned to places where they fear persecution.

The 1996 legislation prevents judges from considering whether there are compelling reasons for immigrants to remain in the US even though they broke the law. It prevents judges from striking a balance between the reasons for deportation — i.e. the seriousness of the crime – and the length and breadth of an immigrant’s ties to the United States. While it may be fair, for example, to deport an immigrant who commits murder within six months of his arrival in the US, it may be grossly unfair to deport a parent of young children who has legally lived in the US for 30 years and who was convicted of passing a forged check.

Who is Deported for Which Crimes and to Where?

Based on the US Census, Human Rights Watch estimates that out of the 1.6 million family members left behind by criminal deportees, 540,000 were US citizens by birth or naturalization. We have found no way of reliably estimating the numbers of lawful permanent residents within the families of deported immigrants.

Figure 1¹



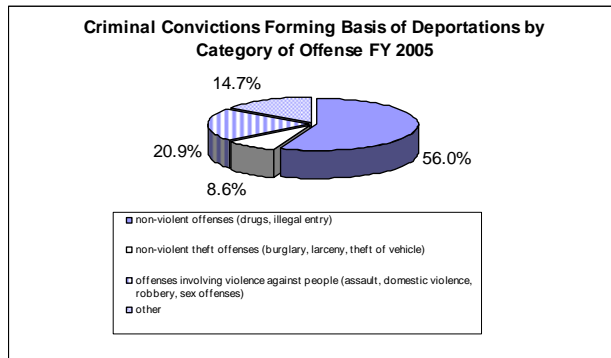
For reasons that are unclear, regular press updates by Immigration and Customs Enforcement (ICE) always tout the deportations of violent criminals, but keep vague the other categories of immigrants deported. ²

¹ Source: For FY 1996 and FY 1997, Immigration and Naturalization Service, “Enforcement Operations, Aliens Removed by Criminal Status and Region and Selected Country of Nationality,” *Statistical Yearbook 1997*, Table 65, p. 185. For all subsequent years, Department of Homeland Security, *Yearbook of Immigration Statistics 2005*, Table 41 and Table 42 <http://www.dhs.gov/ximgt/statistics/publications/YrBk05En.shtm>. According to ICE, tables 41 and 42 should be added to calculate the total number of non-citizens removed on criminal grounds. Human Rights Watch telephone interview with Elizabeth M. Grieco, Ph.D., Office of Immigration Statistics, Department of Homeland Security, Washington, D.C., March 1, 2007

² For example, one ICE press release highlights the deportations of two men: a Brazilian who was convicted for assault with a deadly weapon, domestic assault and unlawful possession of a firearm; and a Jamaican who was deported for

Despite the fact that the relevant laws were passed ten years ago, data on the underlying convictions for deportations were released for the first time by ICE at the end of 2006 for fiscal year 2005. These data show that 64.6 percent of immigrants were deported for non-violent offenses, including nonviolent theft offenses; 20.9 percent were deported for offenses involving violence against people; and 14.7 percent were deported for unspecified “other” crimes.

Figure 2³



Applying these percentages from 2005 to the aggregate number of persons deported allows us to estimate that 434,495, or nearly a half million people, were non-violent offenders deported from the United States in the 10 years since the 1996 laws went into effect. In addition, we can estimate that 140,572 people were deported during that same decade for violent offenses.

Non-citizens deported for criminal offenses come from the same countries and regions of the world as all immigrants living in the United States. Therefore, the bulk of those deported—or 93 percent—are sent to countries in North and Central America and the Caribbean. Mexico receives by far the largest number of immigrants deported for criminal convictions, followed by the Dominican Republic, El Salvador, Honduras, Colombia, Jamaica, Guatemala, Canada, Haiti and Brazil.

Striking the Right Balance in Deportation Policy

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.

“unnatural acts upon a child; providing obscene materials to minors; assault and battery; breaking and entering, larceny and possession of a controlled substance.” But the agency failed to describe the crimes of the 756 other immigrants deported during the same ICE operation. “ICE Removes 758 Criminal Aliens from 5-State Area During July,” Office of the Press Secretary, Immigration and Customs Enforcement Public Affairs, August 15, 2006, www.ice.gov/pi/news/newsreleases/articles/060815neworleans.htm (accessed May 30, 2007).

³ 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.

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 that country's interest in deporting him. Unfortunately, that is precisely what US immigration law fails to do.

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 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.

Human Rights Watch calls on Congress 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.

We recommended Congress amend the 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; ensuring 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.

- Using its oversight role, Congress should require the Department of Homeland Security to publish annual statistics on the convictions forming the basis for all removals from the United States on criminal grounds, the immigration status (i.e. lawful permanent resident, undocumented, etc.) of all persons removed on criminal grounds, and whether non-citizens removed have family relationships with US citizens or lawful permanent residents.

Thank you again for giving me the opportunity to testify. I look forward to answering any questions the members of the Committee might have.

Human Rights Watch accepts no funding from any Federal agency of the U.S. or any government.