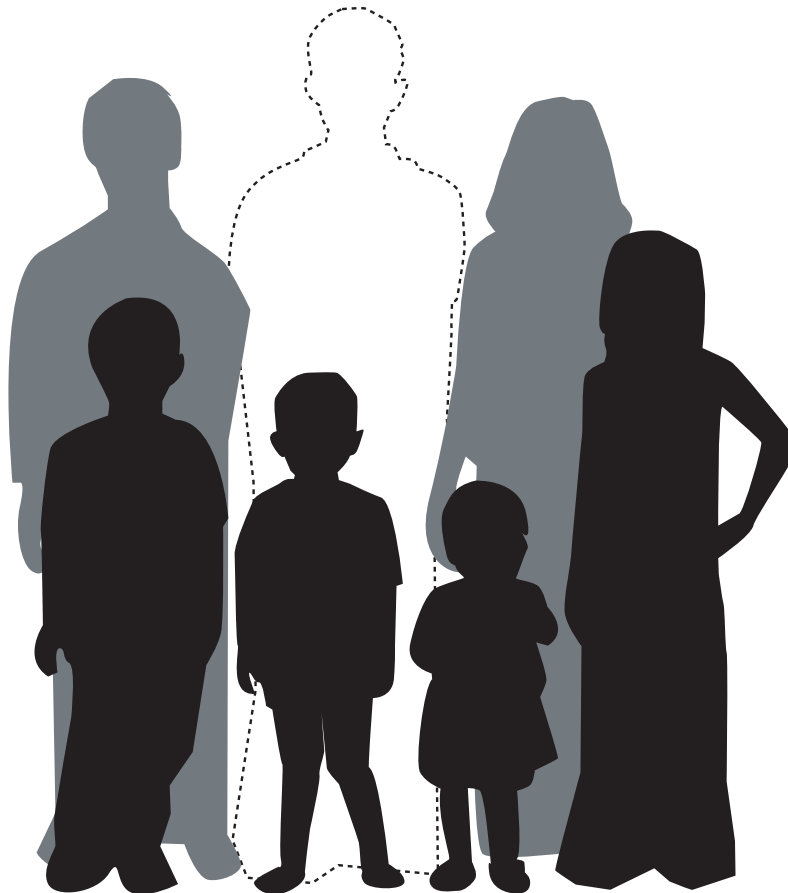


# JUSTICE DETAINED



## THE EFFECTS OF DEPORTATION ON IMMIGRANT FAMILIES

A collaborative report produced by Asian & Pacific Islander Youth Promoting Advocacy and Leadership (AYPAL) and the Data Center

This report is based on data collected by the Office of Immigration Statistics; by an INS testimony to the U.S. Senate Subcommittee on Commerce, Justice, State and the Judiciary; and on literature compiled by the International Migration Policy Program, and by an academic study of prison population growth.

**March 2004**

# ACKNOWLEDGEMENTS

---

## Principal Authors

Jay Conui  
ly-huong nguyen  
Muey Chiem Saephan  
Dae-Han Song  
Jen Soriano

## Editors

John Fong  
Soo Ah Kwon

## Designer

Joy Gloria Liu

## Youth Researchers

Michelle Hong  
Sophorn Iem  
Jany Ly  
Valerie Nicolas  
Amy Phothyrath  
Paolo Sambrano

## AYPAL thanks the following organizations and individuals for their invaluable contribution to this report:

Asians & Pacific Islanders for Community Empowerment Youth Media Council  
Data Center Dr. Hoan Bui, University of Tennessee, Knoxville

## AYPAL thanks the following organizations and individuals who have endorsed the recommendations in this report:

American Friends Service Committee, Oakland  
Asian American Legal Defense and Education Fund, NY  
Asian Community Mental Health Services, Oakland  
Asian Immigrant Women Advocates, Oakland  
Asian Law Alliance, San Jose  
Asian Pacific American Labor Alliance, Alameda  
County Chapter  
Asian Pacific Environmental Network, Oakland  
Asian Pacific Islander Legal Outreach, Oakland/SF  
API ForCE, Bay Area  
Californians for Justice, Oakland  
Center for Popular Education and Participatory  
Research, Berkeley  
Chinese Progressive Association, SF  
Coalition on Homeless, SF  
Committee for Human Rights in the Philippines, SF  
Committee for Korea Studies, Berkeley  
Community Education Services, SF  
Critical Resistance, Oakland  
East Bay Alliance for a Sustainable Economy, Oakland  
East Bay Asian Youth Center, Oakland  
HERE Local 2850, Oakland  
Immigrant Legal Resource Center  
Khmer Girls in Action, Long Beach  
Kids First, Oakland  
Korea Solidarity Committee, Bay Area  
Korean Americans United for Peace, Bay Area  
Korean Community Center of the East Bay, Oakland  
Korean Youth and Cultural Center, Oakland  
KPFA Radio, Berkeley  
League of United Latin American Citizens,  
Washington, DC  
Let's Get Free, Oakland  
Mandela Arts Center & Reparations Records, Oakland  
Movement Strategy Center, Oakland  
National Council on Crime and Delinquency, Oakland  
National Network for Immigrant and Refugee Rights, SF  
Hope Youth Organizing Team, Oakland  
Oakland Asian Student Educational Services, Oakland  
Pacific Islander Kie Association, Oakland  
People Organized for Worker Employee Rights  
PUEBLO/Youth of Oakland United, Oakland  
Racial Justice 911, Oakland  
SEIU Local 616, Oakland  
SISTA II SISTA, Brooklyn, NY  
Youth Force, Oakland  
Youth Media Council, Oakland  
Youth Together, Berkeley, Oakland, Richmond  
CAAAY Organizing Asian Communities, Bronx, NY  
Voice of Samoa of the South Bay, San Jose  
Marissa Ashkar, SUSTAIN, SF  
Supervisor Alice Lai Bitker, Oakland/Alameda  
Doretha L. Fuller Evans, SEIU Local 790, San Leandro  
Vivek Mittal, Alliance of South Asians Taking Action  
(ASATA), SF  
Clarissa Rojas, INCITE! Women of Color Against  
Violence, SF  
Lori Sterling, Oakland Coalition of Congregations  
Rev. D. Mark Wilson, PhD, McGee Avenue Baptist  
Church, Berkeley  
Eddie Wong, National Asian American  
Telecommunications Association (NAATA), SF

***thank you***

# TABLE OF CONTENTS

---

---

Executive Summary . . . . .	1
Overview of IIRIRA . . . . .	2
Methodology . . . . .	3
Note on Terminology . . . . .	3

## **FINDINGS**

1. Hundreds of thousands of people are being deported every year to countries all around the world. The overwhelming majority of criminal removals are for non-violent crimes . . . . .	5-6
2. Deportations hurt families by potentially leaving hundreds of thousands of children who are left behind in poverty . . . . .	7
3. Despite claims that immigrants are contributing to high crime rates, they are actually likely than native born citizens to commit crimes . . . . .	8
4. Immigrants released from jail are less likely than the native born to be repeat offenders . . . . .	9
5. Immigrants are being deported to countries that the US State Department deems as too dangerous to travel to. . . . .	10
6. The lowering of the threshold for deportable crimes coincides with the national trend that more and more people are being sent to prison and for longer sentences; immigrants are being squeezed at both ends . . . . .	11
Recommendations . . . . .	13

## **APPENDICES**

A. Immigration Law Timeline . . . . .	15-16
B. Glossary of Deportation Terms . . . . .	17-18
C. About AYPAL . . . . .	19

---

---



# EXECUTIVE SUMMARY

---

In November 2002, driven by a growing awareness within the Asian and Pacific Islander immigrant communities that more and more people were getting deported, youth activists at AYPAL, based in Oakland, initiated a campaign to find out what was going on and what they could do about it.

AYPAL found that the problem of deportation was much worse than the isolated incidents we had heard about, and it is only growing more severe. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which made it a lot easier to deport immigrants, including many legal permanent residents who had lived in the United States for many years. They were considered deportable if they had committed any crime involving prison or probation time that added up to one year or more. (See "Overview of IIRIRA" section.)

## **AYPAL's research findings:**

- Hundreds of thousands of people are being deported every year to countries all around the world, and there was a huge increase in deportations from 1996 to 1998, coinciding with IIRIRA being implemented in April 1997.
- The overwhelming majority of "criminal removals" are for non-violent crimes.
- Deportations hurt families by potentially leaving hundreds of thousands of children who are left behind in poverty.
- Despite claims that immigrants are contributing to high crime rates, they are actually less likely than native-born citizens to commit crimes.
- Immigrants released from jail are less likely than the native born to be repeat offenders.
- Immigrants are being deported to countries that the US State Department deems too dangerous to travel to.
- Another reason besides IIRIRA for the huge increase in deportations is that many more people in general (both immigrants and native born) are being sent to prison and for longer sentences because of policy changes like "three strikes" and mandatory minimum sentencing.

## **People Affected:**

In addition, AYPAL interviewed dozens of people facing deportation and their family members, AYPAL has discovered that deportation breaks up families and lives, causes unnecessary economic and emotional strain on families, and is incredibly unfair.



## **In light of the findings, AYPAL Recommends:**

- Congress repeal or reform IIRIRA so that immigrants convicted for relatively minor offenses can no longer be deported and separated from their families.
- People who have been deported because of IIRIRA should be allowed to apply for a waiver to re-enter the U.S.
- Entitle all immigrants facing deportation due process and a hearing by an immigration judge who can determine whether he/she represents a threat to public safety.
- The Bureau of Immigration and Customs Enforcement (formerly the INS) ensure proper treatment of all detainees, and that family members are kept notified as to their status and whereabouts.

# OVERVIEW OF IIRIRA

---

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA, hereafter referred to as the 1996 Immigration Act) was passed by Congress and signed by then-President Clinton to calm public fear of terrorist attacks in the wake of the Oklahoma-City bombing (before it was found out the bombing was a domestic act). The mandatory detention and deportation provisions of the 1996 Immigration Act increased the power of INS to quickly deport non-citizen immigrants convicted of crimes.

Among its provisions:

- The 1996 Immigration Act expanded the definition of “aggravated felonies” to increase the number of crimes that made a person subject to removal. In general many of the crimes included in the expansion are punishable with sentences of one year or more (regardless of how long you actually serve or if the sentence was suspended). Before the 1996 Immigration Act most deportable crimes carried five years or more of sentencing. Many offenses that are misdemeanors under criminal law are now considered “aggravated felonies” under immigration law.
- The 1996 Immigration Act’s mandatory deportation laws changed the rules to deny people their ability to ask for a waiver of deportation before an immigration judge. Before 1996, an immigrant facing deportation could show that he or she was a long-term resident holder with a family and had been rehabilitated. Now, there is no basis of relief whatsoever, even if the permanent resident has a spouse and children who are US citizens.
- The 1996 Immigration Act is retroactive, meaning that immigrants who committed their crimes more than 20 years ago and have been law abiding since that time can now face deportation. The conviction is often detected when applying for US citizenship or when entering the US from a trip abroad. The retroactive provision of the Immigration Act also means that immigrants who agreed to plea bargains before 1996 to a sentence of less than five years but more than one, had the rules changed on them so that they suddenly became subject to deportation.
- For those arrested after 1996, the law does not require that an immigrant defendant be notified by a judge or attorney that they are subject to deportation if they agree to a plea bargain with more than one year of prison and/or probation. It may be only during incarceration or toward the end of their probation that the permanent resident is notified of possible deportation. Just when one is expecting to be released, BICE (formerly the INS) takes this individual into its own custody and initiates removal proceedings.
- The mandatory detention provision of the 1996 Immigration Act requires the jailing of all immigrants facing deportation – with no chance for bail. The detainee can be jailed anywhere in the country, hundreds or thousands of miles from their family and attorney, and BICE is not required to keep families informed of his or her whereabouts. Frequently the individual can be detained for years beyond the period of their criminal sentence.
- Many countries do not have agreements with the US to repatriate individuals that BICE wants to deport. These detainees can languish in immigration prison indefinitely. The US is trying to pressure many of these countries to sign repatriation agreements. For example, on March 22, 2002, the US government signed a secret closed door agreement with the government of Cambodia. The resulting upsurge in deportations of Cambodians is what originally drew AYPAL’s attention to the issue.



## METHODOLOGY

---

This report is based on data collected by the Office of Immigration Statistics<sup>1</sup> and by an INS testimony to the U.S. Senate Subcommittee on Commerce, Justice, State and the Judiciary<sup>2</sup> and on literature compiled by the International Migration Policy Program<sup>3</sup> and by an academic study of prison population growth.<sup>4</sup> We have made concerted efforts to obtain current primary source data on deportable immigrants disaggregated by criminal status, city of residence, age, marital status, and number of dependents, by submitting several Freedom of Information Act requests to the Bureau of Immigration and Criminal Enforcement (ICE); however as of the publication date, the ICE has yet to comply with our requests within the legally mandated time limit.

## NOTE ON TERMINOLOGY

---

Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), "deportations" and "exclusions" were consolidated under the umbrella of the less politically-charged term of "removal" and "expedited removal"; this is both a semantic and procedural shift that eliminates humanity and judicial review from the process.<sup>5</sup> In our report, we use "deportation" and all its iterations (deport, deportee) to refer to removal proceedings to reflect popular usage and understanding of forced expulsions of a non-citizen immigrant and the aggregated statistical ambiguity in ICE data.

As of March 1st, 2003, the Immigration and Naturalization Services agency (INS) transitioned its service and enforcement functions to the Department of Homeland Security. Enforcement of immigration law including deportation and detention are now under the purview of the Bureau of Immigration and Customs Enforcement (ICE). ICE and INS terms are used interchangeably depending on date.<sup>6</sup>

Unless otherwise specified, "immigrant" is used here to refer to legally-documented non-citizen immigrants in the U.S. (classified along with non-documented, non-citizen immigrants as "aliens" by the INS/ICE).

As a collective group, "Asian," "Asian and Pacific Islander," and "API" are used interchangeably throughout the report except where noted.



---

<sup>1</sup> Office of Immigration Statistics-Department of Homeland Security, 2002 Yearbook of Immigration Statistics. published Oct 2003. <http://uscis.gov/graphics/shared/aboutus/statistics/Yearbook2002.pdf>; "organization" 2/25/2004 <http://www.ice.gov/graphics/about/organization/index.htm>

<sup>2</sup> "Testimony of Commissioner Doris Meissner (INS) before the Committee on Appropriations: Subcommittee on Commerce, Justice, State, and the Judiciary" 3/22/2000. <http://uscis.gov/graphics/aboutus/congress/testimonies/2000/fy2001bud.pdf>

<sup>3</sup> International Migration Policy Program-a program of the Carnegie Endowment for International Peace and the Urban Institute. Research Perspectives on Migration; vol 1, no 5; July/August 1997. <http://www.ceip.org/programs/migrat/rpmvol1no5.pdf>

<sup>4</sup> A. Blumstein & A. J. Beck. "Population growth in U.S. prisons, 1980-1996," in M. Tonry & J. Petersilia (eds), Crime and Justice, A Review of Research, Volume 26: Prisons. Chicago, IL: University of Chicago Press, 1999.

<sup>5</sup> Effective date 1st April, 1997.

<sup>6</sup> "INS into DHS: Where is it now?" 1/26/2004 <http://uscis.gov/graphics/othergov/rpadmap.htm>

*"John Nith" (alias) is 26 years old. He was born in Cambodia and lived in Oakland since 1984. He is currently in the process of being deported.*

Being detained by the INS is like being kidnapped, they can send me anywhere they [BICE] want and when they let you go they let you out in the middle of the night. They dropped us off at the bus station in Yuba [Detention Center]. They don't even tell you ahead of time, they just tell you to pack up and go.

The hardest thing about Immigration Law is that it keeps changing, it's like the U.S. Government makes up the rules as they go. They keep changing, and when you finally catch up it changes again. You need lawyers to help you, but the lawyers cost too much and usually you don't win anyways.

They keep me waiting and I can't make any plans, can't have a family here or there.

*Keo Chea is 23 years old. She was born in Cambodia and grew up in Sacramento since 1981. She currently lives in San Francisco. Her brother is currently being held in an INS detention center awaiting deportation to Cambodia. What follows is a statement from Keo Chea.*

We are an immigrant family. My parents arrived in the U.S. in 1981 and through their struggles they have accomplished many of their dreams here in the U.S. My parents own a grocery store and my sister and I have college degrees. But there is one re-occurring nightmare that reminds us every morning when we wake and every night before we sleep that our dreams for happiness are still just dreams.

My big brother Borom, a free individual in this land of the free, has been imprisoned for the last two and a half years by BICE - the Bureau of Immigration and Customs Enforcement, formerly known as the INS.

He is my father's first born. My mother's golden boy. My first and last hero. Now he awaits deportation to a country he has not seen since he was four. It is the country where his only memory is of slave camps and starvation.

At 17, my brother was arrested and tried as an adult, a decision poorly made by our lawyer. While his crime partners received two years in the California Youth Authority as juveniles, my brother was sentenced to seven years in an adult facility in the California Department of Corrections. Despite the injustice of his predicament, he patiently served his time and paid his debt to society. But he never made it home.

On May 30, 2001, after completing all his time and waiting over 7 years to come home, the INS picked him up on the date of his release. Because he was not a citizen, they detained him and he was deportable under the 1996 law. At the time, there was no agreement between Cambodia and the U.S., yet they held him in jail for nearly a year. Today, over 2 years later, he is still imprisoned in an INS jail.

Our family fled Cambodia in fear of persecution after the communist take-over. Because of the U.S. involvement in the Vietnam War, our country became the battleground for Vietnam and U.S. forces. The U.S. embraced our people as political refugees and opened their doors offering protection from the aftermath of the Vietnam War on our land. And now they are sending my brother back to the very country he was saved from. His only crime is that he holds a green card and not a certificate of naturalization. In this democracy, how does this punishment fit the crime?





## Finding 1. Hundreds of thousands of people are being deported every year to countries all around the world. The overwhelming majority of criminal removals are for non-violent crimes.

Total deportations have more than quadrupled since 1993, and criminal removals<sup>1</sup> have almost tripled. Over 180,000 immigrants were deported in 2003, with over 77,000 of those criminal deportations. The largest annual jump in deportations occurred between 1996 and 1997 (65% increase) and between 1997 and 1998 (51% increase). Although passed in September 1996, the general effective date of IIRIRA was April 1, 1997. This means 1996 had zero months when IIRIRA was in effect; 1997 had 9 months of IIRIRA in effect; and 1998 had 12 months. One concludes that the huge jump in deportations between 1996 and 1998 must be due to IIRIRA.

Immigrants with formal removal came from 179 countries from around the globe in 2002; 49 countries received more than 100 deportees.

By far the most common reason for criminal removal was drug offenses. Immigration crimes were the second most common reason.

Year	Total	Criminal	Non-criminal
1993	42,542	27,818	14,634
1994	45,674	32,512	13,162
1995	50,924	33,842	17,082
1996	69,680	38,015	31,665
1997	114,432	53,214	61,218
1998	173,146	60,965	112,181
1999	180,760	70,186	110,574
2000	185,731	71,801	113,930
2001	177,452	71,994	105,458
2002	148,619	70,759	77,860

*Bryan Hem is 18 years old. Bryan's brother, Eric Hem is 30 years old and lived in Oakland but was deported on May 2002, he is now living in Cambodia. What follows is a statement from Bryan Hem.*

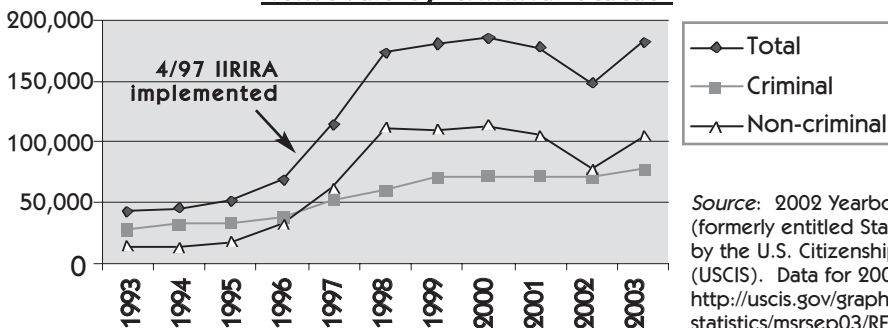
I have a brother who has recently been deported. He had been held by the INS so long after he served his time that we knew he was going to get deported. They didn't even tell us when he was leaving to Cambodia. We weren't informed until the day he had to leave. My family wanted to see him one last time before he got deported, because we knew that was the last time we would see him, but because of the late notice, we didn't get to visit him.

Even while he was being held, it was hard to visit him because they would move him from one place to another. I remember they sent him as far as Washington, D.C., and then all of a sudden he's back in San Francisco then to Bakersfield and so on. Although my family saw this coming, it was hard to accept the fact that he's actually gone back. This brought sadness to our family because he's not HERE with US.

He's also leaving 2 children behind, including his son he never got to hold because he was detained. My parents and older siblings are stressed out now because we're worried about his safety and well-being because they're sending him back to a place they left before, because of war and poverty.



### Removals by Criminal Status



Source: 2002 Yearbook of Immigration Statistics (formerly entitled Statistical Yearbook of the INS), by the U.S. Citizenship and Immigration Services (USCIS). Data for 2003 is from the USCIS web site: <http://uscis.gov/graphics/shared/aboutus/statistics/msrsep03/REMOVAL.HTM>

<sup>1</sup> Criminal Removal is defined in the Glossary, Appendix B.

## Aliens Removed by Criminal Status and Region, 2002

	<i>Criminal</i>	<i>Non-criminal</i>	<i>Total</i>
Europe	924	2,166	3,090
Asia	1,189	3,128	4,317
Africa	680	1,308	1,988
Oceania	136	269	405
North America	65,346	65,622	130,968
Caribbean	4,365	2,568	6,933
Central America	4,794	9,620	14,414
South America	2,479	5,336	7,815

Source: 2002 Yearbook of Immigration Statistics (formerly entitled Statistical Yearbook of the INS), by the U.S. Citizenship and Immigration Services (USCIS).

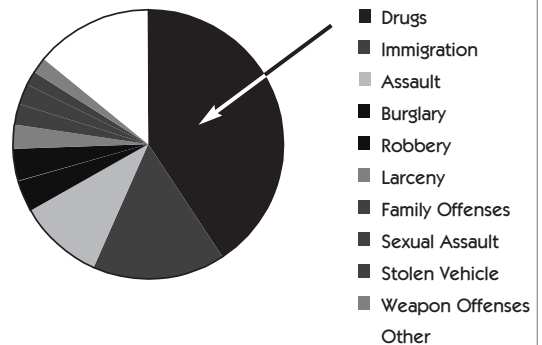
## Countries with the Most Criminal Deportations in 2002

	<i>Criminal</i>	<i>Non-criminal</i>	<i>Total</i>
Mexico	55,638	53,005	108,643
Dominican Republic	1,990	1,483	3,473
El Salvador	1,712	2,105	3,817
Jamaica	1,517	605	2,122
Colombia	1,470	716	2,186
Honduras	1,396	3,284	4,680
Guatemala	1,164	3,626	4,790
Canada	549	429	978
Philippines	304	409	713
Haiti	290	177	467

## Most Common Categories of Crime for Criminal Removals in 2002

	# removed	% of total crimes
Drugs	28,908	41%
Immigration	11,068	16%
Assault	7,123	10%
Burglary	2,838	4%
Robbery	2,616	4%
Larceny	2,009	3%
Family offenses	1,819	3%
Sexual assault	1,761	2%
Stolen vehicle	1,312	2%
Weapon offenses	1,226	2%

### Categories for Criminal Removals 2002



Source: 2002 Yearbook of Immigration Statistics (formerly entitled Statistical Yearbook of the INS), by the U.S. Citizenship and Immigration Services (USCIS).

*Phet is a 24 year old young man. He was born in Laos and has lived in East Oakland since 1988. He is currently held in an INS detention center.*

My mom took me here for a better life and so that we don't have to deal with the communists. Currently, I live with dad and his new family. I have 3 brothers: Soun 23, Thomas 17 and Terry 11. Me and my family love each other very much, everybody gets along, we have our ups and down, but we still love each other, because we're family; that's what counts.

If I were to get deported my family would feel sad, cuz [sic] we used to be a solid family, and me not being with them would leave a big gap in it. My mom and dad would go crazy and I wouldn't be here to guide my brothers to do the right things; my family would not be the same.

Before I was detained I was working for an agency called ultimate staffing located in Fremont. My duty was as a warehouse man, shipping and receiving. I was working and paying my taxes, but ever since I turned myself back in on Nov 19, 2003 I had a job interview on that same day starting off 12.5 an hour but didn't go because of this situation. My life was interrupted, and I lost every opportunity that I had worked hard for. Now when I get out, I have to start over. When I think about it I feel mad, it's not fair for me because I have already done my time and it's affecting not only me but also my family.

## Finding 2. Deportations hurt families by potentially leaving hundreds of thousands of children who are left behind in poverty.

While non-citizen immigrants are just as likely as citizens to be in the labor force, their median family income is almost \$19,000 lower (see table).

The median income for non-citizen family households was \$32,515. The median income for a non-citizen, year-round full-time worker was \$21,164. Thus, removing an average wage earner from the family household would very likely leave the family household income significantly below the poverty level (median income of \$11,351 compared to poverty level of \$13,874 for a family of 3 in year 2000).

Given that hundreds of thousands of immigrants are deported every year, and that immigrant families tend to have more dependent children, this can have a devastating effect on the immigrant population.

### Median Family Income if One Wage Earner Is Removed from the Family

	<i>Native</i>	<i>Not a Citizen</i>
1. Civilian Labor Force (age 16 years and over)	67.3%	67.5%
2. Not in Labor Force (age 16 years and over)	32.7%	32.5%
3. Median Household Income for Family Households	\$ 51,179	\$ 32,515
4. Median Income Year-Round, Full-Time Workers	\$ 32,082	\$ 21,164
5. Family Household Income if One Wage Earner is Removed	\$ 19,097	\$ 11,351
6. Median Number of Children for Married Couple Families	1.15	1.95 <sup>1</sup>
7. Poverty Level in 2000	\$ 11,869 <sup>2</sup>	\$ 13,874 <sup>3</sup>

<sup>1</sup> Data Available only for all Foreign Born, including naturalized citizen

<sup>2</sup> For family of one child and one adult (using the 1.15 median number of children)

<sup>3</sup> For family of two children and one adult (using 1.95 median number of children)

Line 5 is calculated by subtracting Line 4 from Line 3.

Source: U.S. Census Bureau, Current Population Survey, March 2000, Ethnic and Hispanic Studies Branch, Population Division. Median Number of Children from *Profile of the Foreign-Born Population in the United States*, U.S. Census Bureau, December 2001. Poverty Level from Department of Health and Human Services.

"In its zeal to enforce immigration laws, the INS sometimes violates the civil rights of Mexican nationals in the U.S. For example, during "Operation Last Call" in Texas last September (1998), the INS arrested 110 Mexicans for prior drunk driving convictions. Eighty seven percent (87%) of those arrested were married, 90% had an average of 3.2 children, 82% of their children were U.S. nationals. The detainees had been permanent residents in the U.S. for an average of 21.6 years. This operation was carried out in a way that caused emotional trauma to families -- Mexican families, who are U.S. families too."

**Gustavo Mohar**, Minister for Political and Congressional Affairs, Embassy of Mexico, "Criminal Aliens and Immigration: Taking Stock and Looking Ahead" Conference, February 10, 1999, co-sponsored by The International Migration Policy Program of the Carnegie Endowment for International Peace and the Fundacao Luso-Americana para o Desenvolvimento



### Finding 3. Despite claims that immigrants are contributing to high crime rates, they are actually less likely than native born citizens to commit crimes.

In justifying the need for IIRIRA, Rep. Lamar Smith (R-TX), the chief architect of the bill, has often pointed to the “rising crime rate among immigrants.” Yet in a study by the Carnegie Endowment for International Peace in 1997 (the year that IIRIRA was implemented) the authors found that “studies indicate that immigrants are one to two thirds less likely to be incarcerated as the native born.”<sup>2</sup>

The study found that in seven states with the largest immigrant populations (see table), the incarceration rate (ratio of prison population to overall state population) for the Foreign Born was only 59% of the incarceration rate for the general population – in other words, 41% lower. For legal permanent residents (those who are affected by the criminal deportation clause of IIRIRA) the rate was 63% lower. The study also pointed that if adjusted for the fact that a higher percentage of immigrants live in poor, high crime neighborhoods, the results would most likely be even lower.

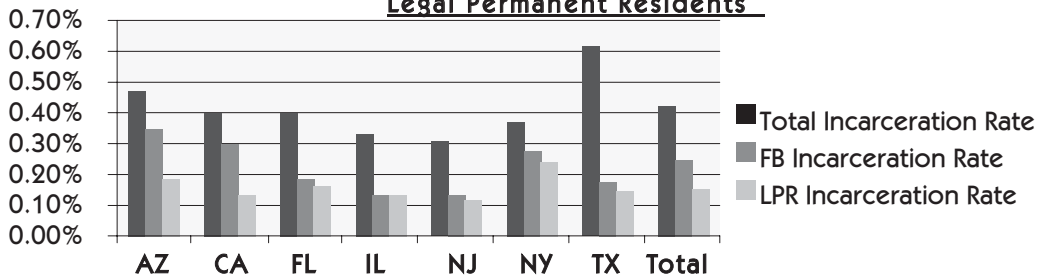
#### Foreign Born Incarceration Rates vs. Total Population Incarceration Rates

	FB PP	FBSP in'000s	FBIR	Total PP	Total SP in'000s	Total IR	FB IR / Total IR	Ratio for LPR
Arizona	1,666	489	0.34%	19,746	4,235	0.47%	0.73	0.40
California	22,913	7,755	0.30%	125,605	31,730	0.40%	0.75	0.33
Florida	3,683	2,037	0.18%	57,166	14,273	0.40%	0.45	0.40
Illinois	1,259	984	0.13%	38,531	11,845	0.33%	0.39	0.39
New Jersey	1,376	1,064	0.13%	24,632	7,929	0.31%	0.42	0.37
New York	8,223	2,986	0.28%	66,750	18,245	0.37%	0.75	0.65
Texas	3,656	2,074	0.18%	116,195	18,932	0.61%	0.29	0.23
Total	42,776	17,389	0.25%	448,625	107,189	0.42%	0.59	0.37

1. FB PP: Foreign Born Prison Population (*Fiscal Impacts of Undocumented Aliens*, Urban Institute, 1994)
2. FB SP: Foreign Born State Population (U.S. Bureau of the Census, 1995)
3. FB IR: Foreign Born Incarceration Rate, Column 1 divided by Column 2
4. Total PP: Total Prison Population (Department of Justice 1995)
5. Total SP: Total State Population (U.S. Bureau of the Census, 1995)
6. Total IR: Total Incarceration Rate, column 4 divided by Column 5
7. FB IR/Total IR: Foreign Born Incarceration Rate ratio to Total Incarceration Rate, Column 3 divided by Column 6.
8. Ratio for LPR: ( Legal Permanent Residents). “Legal” and “Illegal” breakdown from *Estimates of the Undocumented Population residing in the United States* (October 1992 and October 1996 numbers were averaged to produce 1994 numbers.)

8

#### Rates of Criminality Among Total Population, Foreign Born and Legal Permanent Residents



<sup>2</sup> Research Perspectives on Migration, A joint project of the International Migration Policy of the Carnegie Endowment for International Peace and the Urban Institute, Washington, DC; Vol 1, Number 5/ July/August 1997

#### **Finding 4. Immigrants released from jail are less likely than the native born to be repeat offenders.**

Another justification often cited by backers of IIRIRA is that “aliens who have committed crimes in the U.S. will continue to commit crimes and victimize American citizens.”<sup>3</sup> Yet data from the INS (now the Bureau of Immigration and Customs Enforcement) made available in 2000 to the House and Senate Appropriations subcommittees, show a lower recidivism (repeat offender) rate for immigrants. Of the 35,318 criminal aliens INS released from custody, during October 1994 and May 1999, there were 11,605 who went on to commit new crimes. The 37 percent recidivism rate was below the 66 percent rate for released prisoners overall for the comparable period.

Source: U.S. Senate, Committee on Appropriations, Subcommittee on Commerce, Justice, State and the Judiciary, testimony of Doris Meissner, Commissioner, Immigration and Naturalization Service, March 7, 2000.

*“Tony Nguyen” (alias) is 21 years old. He was born in Vietnam and lived in San Leandro, CA since 1990. He is currently in the process of getting deported.*

I've been living here so long, I consider the states my home. If I get deported, life is over for me: no job, no career, no dream, no freedom. I don't see a future for me in Vietnam. I don't speak Vietnamese fluently, I feel like I'd be a helpless fish surrounded by piranhas. Once I arrive in Vietnam, they'd question me. People in Vietnam would torture me, or possibly kill me cuz of my father, because we fled the country.

We fled our country, my homeland, because my father refused to fight for the communist regime. I was 5 during the war. All I remember was that my dad was in prison. We left with no food, no money, no materials. We were on a boat in the ocean for weeks. People were dying of starvation. We were worried about sea pirates. Those who were still alive were lucky. We lived in a Hong Kong refugee camp for 2 years.

The reason I was detained was because times were hard. I was trying to make a little extra money. I was growing up in a community with no support, a city where the crime rate is high. I got pulled back into the streets because of my surroundings.

I was convicted of "discharge of a fire-arm in public" and "grand theft auto." I am sorry for what I did because all of those things I did, I did against the community. That's why I came back to work for the community, to help bring knowledge to the community, especially the youth. I work for EBAYC (East Bay Asian Youth Center) as a program assistant/counselor at Roosevelt Junior High School in Oakland for 150 kids. I'm also a ramp agent for an airline company to help support my family.

I know that my family needs me around, that's why I'm helping my family in anyway that I can. They need my support financially. I'm the oldest boy in the family, the role model for my brothers and sisters. It would be difficult for my family to survive without my contribution...when I was detained I was depressed and my parents were depressed, because I wasn't there when they needed me and I let them down and I felt ashamed. I was a disgrace to my family.

Now, I'm giving back to my community because the community was giving to me. I owe a lot to APIForCE (Asians and Pacific Islanders for Community Empowerment), without their support, I'd be helpless in detention. We need community groups like them, like AYPAL, to inform the community. Right now, we need great leaders to tell Congress what's up. Barbara Lee is a great leader, but she needs to tell Congress what's happening to our community.

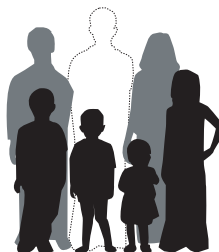
## Finding 5. Immigrants are being deported to countries that the US State Department deems as too dangerous to travel to.

The U.S. State Department issues Public Announcements “to disseminate information quickly about terrorist threats and other relatively short-term conditions that pose significant risks or disruptions to Americans.”<sup>4</sup> In addition the State Department issues U.S. Travel Warnings when the Department recommends that Americans avoid a certain country. As of March 11, 2004, there are 11 countries on the Public Announcements list (not including entire regions such as the Middle East and East Africa) and 27 countries with Travel Warnings. The US government deported 6,208 immigrants to these 38 countries in 2002 (the latest year that deportation by country figures are available).

<i>Countries with State Dept. Public Announcements as of 3/11/04</i>	<i>No. of Deportations in 2002</i>
Bangladesh	91
Djibouti	1
Ethiopia	24
Kyrgyz Republic	2
Laos	5
Malaysia	92
Philippines	713
Solomon Islands	0
Tajikistan	1
Uzbekistan	46

<i>Countries with State Dept. Travel Warning as of 3/11/04 in 2002</i>	<i>Number of Deportations</i>
Afghanistan	10
Algeria	30
Angola	10
Bosnia	8
Burundi	2
Central African Republic	2
Colombia	2186
Cote d'Ivoire	34
Democratic Republic of the Congo	22
Haiti	467
Indonesia	180
Iran	52
Iraq	7
Israel, the West Bank and Gaza	162
Kenya	86
Lebanon	117
Liberia	35
Libya	4
Nepal	21
Nigeria	457
Pakistan	783
Saudi Arabia	34
Somalia	37
Sudan	20
Turkey	125
Yemen	50
Zimbabwe	24
<b>Subtotal Travel Warnings</b>	<b>4,965</b>

10



<sup>3</sup> Jim Wilson, from the Staff of Representative Lamar Smith, Chairman of the House Subcommittee on Immigration and Claims, at the "Criminal Aliens and Immigration: Taking Stock and Looking Ahead" conference. February 10, 1999, Washington, DC.

<sup>4</sup> US State Department web site. [http://travel.state.gov/warnings\\_list.html](http://travel.state.gov/warnings_list.html)



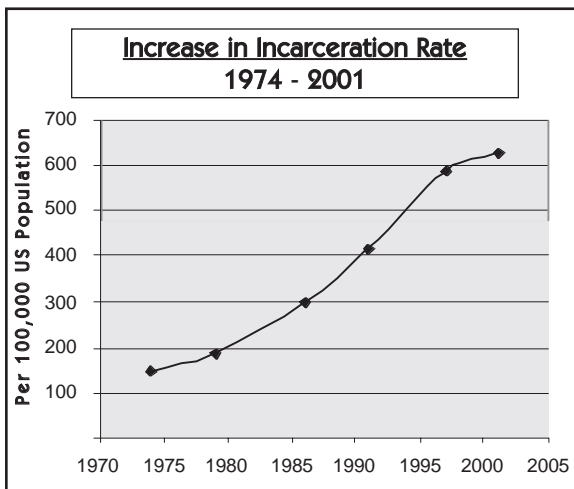
**"Mitch Mao" (alias) is 30 years old. He was born in Cambodia and lived in Los Angeles since 1983. He is currently in the process of being deported.**

My family came to this country because of war in Cambodia to escape the Khmer Rouge that was killing everyone, so we had to leave Cambodia in order to save ourselves. My family is very scared and concerned about my possible deportation because they know what it's like in Cambodia, they fear for my life because of our past, people might try to kill me if I returned to Cambodia.

The reason why I was in detention was for an attempted robbery I was convicted for when I was 21 years old, before the 1996 IIRIRA passed. I regret what I did and if I could go back and do it all over again I would not have done what I did. All I want is a second chance to become a better person, which I am doing right now by working and going to school at the same time. I'm a junior at DeVry University getting my degree in computer programming.

The worst thing about being detained is the uncertainty of my future. I am afraid if I get married, and I get deported, who's going to take care of my wife and kids. I want to get married, but I don't want to leave my future wife hurting. I am always on edge because I don't know when I am going to get deported. I hope the law will change before they deport me to my country. I have learned from my mistake and now I am going back to school and trying to get my B.A. in computer programming.

**Finding 6. The lowering of the threshold for deportable crimes coincides with the national trend that more and more people are being sent to prison and for longer sentences. Combined with IIRIRA this trend means immigrants are being squeezed from both ends, serving longer sentences for minor crimes while shorter sentences qualify them for deportation.**



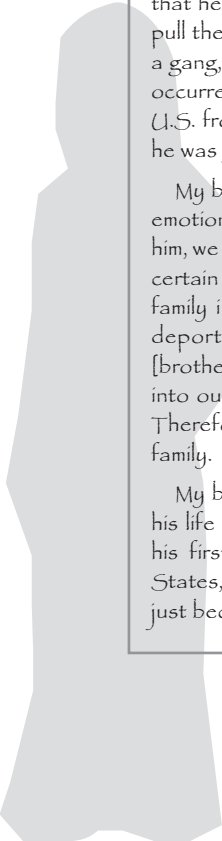
The federal and state prison population in the US grew from 216,000 in 1974, to 1,319,000 in 2001. As a percentage of total population, the rate more than quadrupled from 149 per 100,000 population to 628. (See table and chart.) According to two of the country's leading experts on criminal justice statistics, the growth in incarceration between 1980 and 1996 is attributable entirely to public policy changes that increased the imposition of prison sentences and their length (such as mandatory minimum sentencing and "three strikes"), and not to increased offending.<sup>5</sup> Thus, because of criminal justice and immigration policy changes combined, many immigrants can be deported for crimes for which they would not have even gone to prison 10-15 years ago.

**Growth in Population in State and Federal Prisons**

	1974	1979	1986	1991	1997	2001
Number of Adult Prisoners	216,000	302,000	524,000	788,000	1,171,000	1,319,000
Number per 100,000 US Population	149	188	298	419	588	628

Source: Thomas O. Bonczar, "Prevalence of Imprisonment in the U.S. Population, 1974-2001," Bureau of Justice Statistics Report, August 2003, NCJ 197976.

<sup>5</sup> Blumstein and Beck, "Population Growth in U.S. Prisons. 1980-1996" (1999), in Crime and Justice: A Review of Research, vol. 26



*Angelica Cabande is 24 years old. She was born in the Philippines and lived in Daly City, CA since 1988. Her brother was detained for deportation but won his release with support from family and community allies. What follows is a statement from Angelica, gathered before her brother's release.*

My brother was detained due to his past criminal record that he had served about 10 years ago. Although he didn't pull the trigger, he was in the car with his friends who were in a gang, and he was still considered responsible for what had occurred. He was stopped in the airport coming back to the U.S. from the Philippines and his old record popped up and he was given a deferred hearing right away.

My brother being detained put a lot of stress in our family emotionally, physically and financially. If we wanted to see him, we had to go all the way to Yuba County and we had only certain days to do that. On top of that my brother has a family in the Philippines, which he is supporting. If he gets deported, we definitely won't just forget about them [brother's family in Philippines]. We as a family will add them into our own finances. Plus, that will break our family circle. Therefore, that'll be a lot of burden in our relationship as a family.

My brother regrets what had happened that's why he got his life back together and never been back to jail ever since his first offense. We feel privileged to be in the United States, but that doesn't mean we should be treated this way just because we are considered immigrants.



## RECOMMENDATIONS

---

### The findings of this report show that:

- IIRIRA devastates hundreds of thousands of families per year, both economically and emotionally
- Deportation does not truly further public safety since it targets an “immigrant crime” problem that is based more on political demagoguery than actual facts
- Deportation is a punishment that does not fit the crime
- Mandatory and indefinite detention of everyone facing deportation adds additional and unnecessary hardship on detainees and their families

### Based on such findings, AYPAL urges Congress to repeal or reform the harsh 1996 immigration law to include the following provisions:

- Increase the threshold for what counts as an “aggravated felony” and deportable crime to violent and serious offenses with a prison sentence of at least 5 years.
- Entitle all immigrants facing deportation to due process and a hearing by an immigration judge who can determine whether he/she represents a threat to public safety.
- Allow those awaiting a hearing to be released on bond if they are not dangerous or likely to flee.
- Allow those already deported under IIRIRA to apply for a Waiver to re-enter the U.S.



# APPENDIX A - IMMIGRATION LAW TIMELINE

This timeline is meant to provide an overview of how immigration laws evolved around the issue of deportations and criminal removals as well as to provide some insight into how different components of the 1996 IIRIRA emerged from past immigration laws. This timeline is not meant to be a comprehensive overview of immigration laws in the United States.

**1891** – To the list of undesirable ineligible for immigration, Congress adds polygamists, “persons suffering from a loathsome or a dangerous contagious disease,” and those convicted of “a misdemeanor involving **moral turpitude**”<sup>1</sup>

## **1952 – Immigration and Nationality Act (INA)**

INA consolidated previous immigration laws into one coordinated statute. As amended, INA provides the foundation for immigration laws in effect today. The INA deals with immigration, temporary admission, naturalization, and removal of non-citizens.

## **1988 – Anti-Drug Abuse Act (ADAA)**

Created a new retroactive category of deportable criminal offenses known as **aggravated felonies**, which consisted of murder, drug trafficking, or any illegal weapons trafficking.<sup>2</sup>

## **1990 - Immigration Act (IMMACT)**

In 1990, Congress passed amendments to the INA. The statute modified many of the INA's provisions. Among others, IMMACT added two types of crimes to the INA's definition of “aggravated felony:” (1) Crimes of violence for which the immigrant is given 5 years or more, and (2) money laundering.

## **1996 - Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) or 1996 Immigrant Act**

- Lowered the threshold of crimes that are eligible for deportation by redefining **aggravated felonies** and also adding crimes of **moral turpitude**
- Redefined “**aggravated felony**” to include non-serious crimes and potentially any crime for which the sentence of incarceration or parole exceeds 365 days.
- Requires **mandatory detention** of any non-citizen found to be removable. For non-citizens from countries without repatriation agreements (includes Viet Nam, Laos, Cuba, North Korea, Algeria, Belarus, Cameroon, China, Eritrea, Iran, Iraq, Somalia and Ukraine), this provision results in indefinite detention.
- Enforcement of law is **retroactive**, which means that even crimes convicted before the law was enacted are still eligible for deportation.
- The IIRIRA also further militarized border enforcement, closing opportunities for undocumented immigrants to adjust their status, and making it more difficult to gain asylum.

**1996 - Anti-Terrorism and Effective Death Penalty Act (AEDPA)** amends federal habeas corpus laws for prisoners by creating restrictive requirements and limitations.<sup>3</sup>

**2001 - INS vs. St. Cyr** US Supreme Court held that the provision in AEDPA & IIRIRA does not prevent people from filing for habeas corpus (release from detention or jail).<sup>4</sup>

**2001 - Zavydas vs. Davis** US Supreme Court rules that the IIRIRA provision that authorizes post-removal order detentions (a person who has removal order but is detained under IIRIRA) does not authorize indefinite detention.<sup>5</sup>

<sup>1</sup> <http://uscis.gov/graphics/aboutus/history/articles/oview.htm>

<sup>2</sup> Changing scope of Aggravated felony

[http://www.aif.org/lac/lac\\_briefarch\\_9912254920.htm](http://www.aif.org/lac/lac_briefarch_9912254920.htm); [http://library.lp.findlaw.com/articles/file/00944/001215/title/subject/topic/criminal%20Law\\_other%20felonies/filename/criminallaw\\_1\\_134](http://library.lp.findlaw.com/articles/file/00944/001215/title/subject/topic/criminal%20Law_other%20felonies/filename/criminallaw_1_134); <http://www.lectlaw.com/def/a027.htm>;  
"I can't believe it's an aggravated felony" <http://www.civilrights.org/issues/immigration/details.cfm?id=8933>

<sup>3</sup> <http://www.ustreas.gov/offices/eotffc/ofac/legal/statutes/aedpa.pdf>

<sup>4</sup> <http://a257.g.akamaitech.net/7/257/2422/28jun20011200/www.supremecourtus.gov/opinions/00pdf/00-767.pdf>; <http://www.nilc.org/immlawpolicy/judrev/judrev033.htm>

<sup>5</sup> <http://a257.g.akamaitech.net/7/257/2422/28june20011130/www.supremecourtus.gov/opinions/00pdf/99-7791.pdf>

**2001 - Kim Ho Ma vs. Janet Reno** US Supreme Court granted Ma a habeas corpus petition because removal was not in the foreseeable future as the US was lacking repatriation agreements. *This ruling ruled that any non-citizen with removal orders should be released after 90 days in detention when there is no removal in the foreseeable future.*<sup>6</sup>

**2002 – Homeland Security Act** transfers the INS functions to the new Department of Homeland Security (DHS). Immigration enforcement functions were placed within the Directorate of Border and Transportation Security (BTS), either directly, or under Customs and Border Protection (CBP) (which includes the Border Patrol and INS Inspections) or **Immigration and Customs Enforcement (ICE)** (which includes the enforcement and investigation components of INS such as Investigations, Intelligence, Detention and Removals).<sup>7</sup>

**2002 – US-Cambodia Memorandum of Understanding (MOU)**

Catalyzed by the successful Supreme Court cases that embarrassed the Bush administration, the U.S. Ambassador and Cambodian Minister of the Interior negotiate a “repatriation” agreement. Cambodia was pressured into signing this MOU by U.S. threat of withholding tourist visas for Cambodian nationals.

**2003 - Demore vs. Kim** U.S. Supreme Court upheld the authority of the federal government to detain, pending deportation, those aliens ordered deported because they have been convicted of aggravated felonies. The Court ruled that IRRIRA provision mandating detention does not violate due process, because immigration authorities have good reason to believe that any alien felon who is released pending deportation poses a threat to public safety and is likely to flee rather than appear for deportation. ICE said it would re-detain individuals who had previously been released after a bond hearing, but who arguably fell within the mandatory detention provision.<sup>8</sup>

<sup>6</sup> [http://supreme.usatoday.findlaw.com/supreme\\_court/briefs/00-38/2000-0038.pet.rep.rtf](http://supreme.usatoday.findlaw.com/supreme_court/briefs/00-38/2000-0038.pet.rep.rtf);  
<http://www.aclu.org/ImmigrantsRights/ImmigrantsRights.cfm?ID=9253&c=95>

<sup>7</sup> <http://uscis.gov/graphics/othergov/roadmap.htm>

<sup>8</sup> <http://www.supremecourtus.gov/opinions/02pdf/01-1491.pdf>; [http://www.aifl.org/lac/lac\\_pa\\_090203.asp](http://www.aifl.org/lac/lac_pa_090203.asp)

## APPENDIX B - GLOSSARY OF DEPORTATION TERMS

---

**Criminal Removal.** Deportations (or removals) are classified by BICE as either criminal or non-criminal. A criminal removal means that the individual deported had a criminal conviction history. However, the criminal conviction may not necessarily be the reason for the removal, as some individuals with criminal convictions may be more easily deported for “administrative” reasons. A non-criminal removal means that the individual had no criminal convictions, and the cause for removal is usually administrative, such as visa violations.

**Deportable Crime.** A legal permanent resident is subject to criminal removal if he or she has been convicted of one of the following:

- an **aggravated felony**
- two **crimes of moral turpitude** (or just one if committed within five years of coming to US), or a drug related crime

IIRIRA expanded aggravated felony to include crimes with a sentence of 1 year or more (down from 5 years). A crime of moral turpitude “is difficult to define with precision”<sup>1</sup> but is generally thought to include crimes that involve dishonesty, fraud, an intent to steal or physical harm and sexual misconduct.

Under IIRIRA, deportable crimes can include gambling, shoplifting, commercial bribery, domestic violence, tax evasion, vandalism and receiving of stolen goods

**Deportation proceedings.** Before the implementation of IIRIRA on April 1, 1997, a deportation case usually arose when the INS alleged that a person entered the country illegally or entered the country legally with a visa but then violated one or more conditions of the visa. INS issued a charging document to the person believed deportable called an Order to Show Cause (OSC). An OSC is the charging document that was used prior to April 1, 1997. A deportation proceeding actually began when the OSC was filed with an Immigration Court. In such proceedings, the Government, represented by the INS, **had to prove that the person was deportable** for the reasons stated in the OSC. As of April 1, 1997, deportation and exclusion proceedings were replaced by removal proceedings.

**Exclusion Proceedings.** Prior to April 1, 1997, an exclusion case involved a person who entered the country but was stopped at the point of entry because the INS found the person to be inadmissible (for example, if an INS officer believed the applicant’s entry papers were fake.) To place an applicant for admission to the United States in exclusion proceedings, the INS issued a charging document referred to as an “I-122” and filed it with an Immigration Court. The INS District Director could either detain or “parole” the person into the country. The person would not technically be considered as having entered the country. During exclusion proceedings, the burden of proof was on the applicant to prove admissibility to the U.S. (guilty until proven innocent). All exclusion proceedings were closed to the public unless requested otherwise by the person. Beginning April 1, 1997, deportation and exclusion proceedings were replaced by removal proceedings.



---

<sup>1</sup> Department of Justice, Criminal Resource Manual. [http://www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm01934.htm](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm01934.htm)

**Removal Proceedings.** An Immigration Court proceeding begun after April 1, 1997 seeking to stop certain immigrants from entering the U.S. or removing them from the U.S. A removal case arises when the INS issues a charging document called a Notice to Appear (NTA) and files it with an immigration court. Any non-citizen given an order of removal because of an aggravated felony is barred from ever returning, all others with removal orders are barred for up to 20 years.

Any immigrant who does not show up to hearings or fails to leave faces imprisonment for up to 10 years and a bar of re-entering.

**Voluntary Departure.** The departure of a non-citizen without an order of removal. The departure may or may not have been preceded by an Immigration hearing. An alien allowed to voluntarily depart admits removability "guilt" but is not barred from seeking admission at a port of entry in the future. Failure to depart with the timeframe results in a fine and a ten-year bar against applying for any relief from removal.

## APPENDIX C - ABOUT AYPAL

---

### AYPAL Mission

AYPAL aims to change the relationship of power between young people and policy makers through youth-identified and youth-run direct action organizing and arts activist campaigns for school reform and community improvement.

### AYPAL Guiding principles

- Youth Leadership and Youth Ownership  
*Youth identify the problems and create the solutions for positive change*
- Community Involvement  
*The problems that AYPAL addresses are experienced by a lot of people in the community, and solutions involve the whole community*
- Promote Social Justice  
*Solutions must help lift up the disadvantaged, and not oppress or pick on any group of people.*

### AYPAL Structure

AYPAL's foundation rests on six neighborhood and ethnic community based Youth Leadership Organizations (YLOs) in Oakland. These self-directed youth activist groups, each with 30-45 members aged 12-20, identify, plan and wage community campaigns to address needs based on their research and their own perception and analysis. Because of the YLOs, AYPAL's youth activism is based not solely on an elite team of highly trained and vocal youth leaders, but also on a much larger number of general YLO members.

Each YLO is led by a Leadership Team made up of six high school age interns and one young adult (age 20-25) community organizer. In accordance with AYPAL's first principle of youth ownership, all major programmatic and policy decisions (i.e. what issues to organize around, what types of arts projects, fun social activities, fund-raisers) start with the YLOs at their weekly meetings. Leadership Team interns represent their YLOs at semi-monthly meetings where all six sites get together to coordinate decisions and activities. Leadership Teams also make more detail oriented decisions for their YLOs (such as strategies and evaluations).

AYPAL is a community collaborative made up of six agencies serving Asian and Pacific Islander youth in Oakland. Each agency sponsors one of the six YLOs. The agencies are:

**Asian Community Mental Health Services (ACMHS)**  
**Filipinos for Affirmative Action (FAA)**  
**Korean Community Center of the East Bay (KCCEB)**  
**Lao Lu Mien Culture Association (LIMCA)**  
**Oakland Asian Student Educational Services (OASES)**  
**Pacific Islander Kie Association (PIKA)**

### Youth Decision-making

Program decisions, like campaign strategies and types of youth activities, are made by youth themselves at the site-based youth group meetings. Coordination among the six sites happens through youth representatives from all sites meeting together (at least once a month during school year, once or twice a week during summer which is when the Training Program for leaders takes place). We believe this model gives more legitimate youth voice in decisions than having a couple of youth representatives on a board dominated by adults.