



## Southeast Asian Americans and Deportation Policy

Since 1998, over 13,000 Cambodian, Laotian, and Vietnamese Americans have received final deportation orders, including many legal permanent residents.<sup>1</sup> In most of these cases, individuals came to the U.S. as infants and toddlers, fleeing the conflicts in Southeast Asia as refugees with their families. Deportation in these and other immigrant communities soared after 1996, when Congress passed the *Antiterrorism and Effective Death Penalty Act* (AEDPA) and the *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA). The laws were made to be retroactive, meaning that noncitizens could be deported for certain crimes even if they were committed *before* the passage of the law. In addition, the laws **severely restricted the ability of immigration judges to consider the individual circumstances of a person** before ordering deportation.

The 1996 laws greatly expanded the definition of “**aggravated felony**” under immigration law to encompass over 50 separate crimes in 21 categories, **including some that are neither “aggravated” nor “felonies” under state criminal laws**. According to the Immigration Policy Center, **68% of legal permanent residents who are deported are deported for minor, non-violent crimes**.<sup>2</sup> Noncitizens are not guaranteed legal counsel; a recent study found **that 60% of detained immigrants in detention did not have a lawyer**.<sup>3</sup>

Deportation places unbearable burdens on families, who may lose a spouse, parent, caretaker, or child. The Applied Research Center found that in the first six months of 2011 alone, **more than 46,000 parents of citizen children were deported**, leaving many in foster care or Child Protective Services.<sup>4</sup> Deportation also costs U.S. taxpayers—according to the National Immigration Forum, the Obama administration has deported over one million people **at a cost of about \$23,000 per person**.<sup>5</sup> The U.S. now spends \$18 billion annually on border control and immigration enforcement – substantially more than all other federal law enforcement programs *combined*.<sup>6</sup>

Over the past decade, SEARAC, along with our key allies and advisors, have been working on immigration and deportation policies from a refugee perspective. Cambodian, Laotian, and Vietnamese communities across the country have seen fathers taken from citizen children, business owners forced to abandon their shops, and valued community members deported for mistakes made in their teens. **We call on Congress to restore basic justice and fairness to our deportation laws that were stripped away in 1996.**

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<sup>1</sup> Transactional Records Access Clearinghouse (TRAC). Syracuse University.

<sup>2</sup> Immigration Policy Center. (2010). “The Ones They Leave Behind: Deportation of Lawful Permanent Residents Harm U.S. Citizen Children.” <http://www.immigrationpolicy.org/just-facts/ones-they-leave-behind-deportation-lawful-permanent-residents-harm-us-citizen-children>.

<sup>3</sup> Markowitz, P., et al. (2011). “Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings.” *Cardozo Law Review*, 33(2). <http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf>

<sup>4</sup> Applied Research Center. (2011). *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*. <http://arc.org/shatteredfamilies>

<sup>5</sup> National Immigration Forum. (2011) *Cut Here: Reducing Wasteful Spending in Immigration Enforcement, Save More Than \$2.6 Billion*. <http://immigrationforum.org/images/uploads/2011/Immigration%20Enforcement%20Fiscal%20Review%20Nov%202011%20.pdf>

<sup>6</sup> Meissner, D., Kerwin, D., Chishti, M., & Bergeron, C. (2013). *Immigration Enforcement in the United States*. Migration Policy Institute, p.9. [www.migrationpolicy.org/pubs/enforcementpillars.pdf](http://www.migrationpolicy.org/pubs/enforcementpillars.pdf)

## **SEARAC's Recommendations:**

- Restore the right of immigration judges to decide whether a person should be deported or not based on the person's total circumstances. Allow judges to consider relief for individuals whose offenses were committed when they were minors, those who demonstrate rehabilitation and reintegration, those with citizen children, and those for whom deportation would pose significant hardship to themselves or their families.
- Narrow the definition of "aggravated felony" so that minor offenses do not trigger mandatory deportation.
- End the deportation of legal permanent residents who were admitted to the U.S. as refugees, particularly those who arrived as young children.
- Ensure the fair and uniform implementation of prosecutorial discretion, including for individuals who are considered aggravated felons under immigration law but clearly pose no danger or risk to the community.
- End mandatory detention. Permit individuals who are deportable and pose no danger or risk to the community to post a reasonable bond or to be released to their family so that they can prepare for their immigration hearing.

## **What's wrong with current deportation laws?**

### **A judge's right to judge**

Judges have little power under current laws to stop a deportation when the person is classified under immigration law as an aggravated felon, even if the person clearly poses no threat to society and contributes in many ways to the community. Absolutely central to the U.S. legal system is the right to a day in court in front of a judge who can weigh the evidence for and against guilt and punishment. The 1996 laws stripped both of these rights from noncitizens convicted of certain crimes.

### **Proportionality**

Because of the 1996 laws, many individuals serve life sentences of exile from their family, community, and country because of petty and minor crimes. U.S. law has determined that deportation is an "administrative" act, not an act of punishment. But the effects of deportation are harsh and disproportionate to the actual crime committed.

### **Double punishment**

In the U.S., a person cannot face trial twice for the same offense—this is called "double jeopardy," and it has no place in the American legal tradition. But noncitizens who commit a crime are tried and sentenced in the criminal justice system, and then face punishment again with a life sentence of deportation.

### **Non-refoulement**

International human rights law, on which our nation's refugee and asylum laws are based, prohibits a country from returning a refugee to the country from which he or she fled. The legal term for this prohibition is *non-refoulement*. Removal of individuals to countries from which they fled in terror, when they clearly pose no threat to U.S. society, runs counter to the spirit of international law—and common decency.