

**FIGHT AGAINST U.S. APARTHEID CONTINUES**  
Immigration Enforcement Legislation Training for Activists & Organizers

March 27, 2004

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# **FIGHT AGAINST U.S. APARTHEID CONTINUES**

Seminar on Immigration Enforcement

March 27, 2004

12 – 4pm

## **AGENDA**

### **INTRODUCTIONS**

### **FACT: DELEGALIZATION IS HAPPENING**

1. **How we got here**: from 1996 thru post 9/11
2. **Vocabulary**
  - a. Criminal alien
  - b. Aggravated felony
  - c. Detention
  - d. Special Interest detainees
  - e. Deportation
  - f. Expedited removal
  - g. Absconder
  - h. Special Registration
  - i. NCIC
3. **Local enforcement**: How is it already happening?
4. **Patriot 2** – immigration provisions
5. **Post Patriot 2**
  - a. CLEAR
  - b. Smith & VICTORY Acts
  - c. STEP Act
6. **Upcoming Litigation**
  - a. NCIC lawsuit
  - b. Supreme Court: Leocal, Benitez, Somali repatriation

### **MYTH: “LEGALIZATION” IS COMING!**

1. Bush and Daschle proposals
2. McCain proposal
3. Civil Liberties Restoration Act
4. Other pending and forthcoming legislation

# Immigrant Apartheid?

## Modern Growth of Deportation

	1988	1990	1996	2001	2003-04
Laws passed	Omnibus Anti-Drug Abuse Act	- Immigration Act of 1990 - Refugee Act	- Anti-terrorism and Effective Death Penalty Act (AEDPA) - Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA)	USA Patriot Act	DSEA (Patriot 2) – <i>pending</i> CLEAR – <i>pending</i> VICTORY & SMITH – <i>pending</i>
Deported	25,829	30,039	69,680	176,984	How many more disappeared?
Voluntary Departure	911,790	1,022,533	1,573,428	1,253,782	
Total Exiled	937,519	1,052,572	1,643,108	1,430,766	

### What did the 1996 laws do?

You can get deported for almost any crime. → **Expanded grounds of deportation**

- Expanded definition of “aggravated felon”
  - 1988 definition includes murder, rape, any drug trafficking crime, or any illicit trafficking in firearms or destructive devices
  - 1996 definition includes fifty more classes of crime, some of which are neither “aggravated” nor a “felony” by criminal law standards (e.g. shoplifting); also almost any crime for which you served at least 1 year in prison
  - Being an “aggravated felon” means you have no rights to prove to a judge that you are rehabilitated and have community ties
- Made new deportation laws for people deemed “terrorists”

You cannot ask any judge for a pardon. → **Mandatory deportation**

- “aggravated felon” who served less than 5 years in prison could apply for relief under 1990 immigration laws. But in 1996 Congress took relief application away from all people whom the INS labels “aggravated felons”

You cannot ask any judge for release on bond. → **Mandatory detention**

- aggravated felons
- immigrants with convictions for firearms, drugs, and other “particularly serious crimes”
- asylum seekers – people who comes to the US to escape persecution
- immigrants with past convictions who are re-entering the US after trip abroad

Deportation becomes a point of no return. → **Lifetime bars to re-entry**

- Restrict re-entry to the US (aggravated felons can never come back; others have 10-year bars)
- Increase penalties for illegal re-entry.

Immigrants do not have the right to a day in court. → **No discretion**

- Attorney General can place asylum seekers and certain criminal aliens into expedited removal proceedings.
- Immigration courts cannot hear a person’s case if that person is subject to mandatory detention and deportation.
- Federal courts cannot review most decisions of the immigration authorities.

People suffer punishments that did not exist at the time of their crime. → **Retroactivity and Double Jeopardy**

Tax money is poured into tearing families apart. → **Expensive**

- Local governments help federal government to enforce immigration laws.
- Federal government pours billions into detention and deportation systems.
- 2003 immigration budget: **enforcement \$781,883,000**    **services \$143,541,000**

# SEPTEMBER 11<sup>TH</sup>

## USA PATRIOT ACT

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

- **“terrorist activity”** expanded
  - New definition even includes *soliciting* funds for a “terrorist activity” or “terrorist organization” unknowingly.
- **“terrorist organization”** expanded to include:
  - any organization so designated by the Secretary of State;
  - a group of two or more individuals, whether organized or not, which “engages in terrorist activity”; and
  - potentially any organization that engages in illegal acts dangerous to human life if they appear intended to influence the policy of the government by intimidation and coercion.
- **Retroactive application:** new grounds applied to past acts, with few exceptions; applies to all non-citizens
- **Mandatory detention** of noncitizens whom the Attorney General certifies as “terrorist” or threats to national security
  - Government must provide notice of charges (immigration and criminal) against person within 7 days of date of detention.
  - If the person cannot be deported, s/he may be detained for additional periods of up to six months, and may continue indefinitely if there is a certified threat to national security or threat of engaging in terrorist activity.

## INTERIM REGULATIONS

The Department of Justice issued 3 interim regulations following 9/11 that together:

- **institute an automatic stay of release** in cases where the INS appeals an immigration judge's decision to order release from detention.
- **discard attorney-client privilege** in cases where the Attorney General certifies reasonable suspicion of “terrorist activity.”
- **limit public disclosure** by any government entity or detention facility of information relating to any immigration detainee.

## PRACTICAL EFFECTS: SCALE, SPECIFICITY, AND SECRECY

- Government targets noncitizens from Arab/South Asian/North African muslim countries on a scale unlike previous INS round-ups.
- Noncitizens on immigration holds who would not have been held in detention prior to September 11 are now being detained systematically.
- New difficulties for these noncitizen detainees in seeking access to counsel
- New difficulties in information access regarding noncitizen detainees of “special interest”(e.g.closed hearings)
- New obstacles to obtaining release of a noncitizen detainee being held on an immigration or material witness hold
- Overall heightened enforcement regime

# SPECIFIC POST 9-11 ENFORCEMENT RELEVANT TO THE NEW YORK AREA

## Post 911 “*Special Interest*” round-ups (9/01-8/02<sup>1</sup>)

- Shortly after 9/11, the FBI and INS arrest at least 1,200 South Asians, Arabs, and North Africans. Their arrests were marked by heavy-handed and well coordinated tactics of entering people’s homes at early hours of the morning and carting them away in front of their families to several detention centers in NJ and Brooklyn.
- These men were initially held indefinitely, in secret, without charge, and with their immigration hearings closed to the public.
- Most of these men were charged with visa overstays and minor immigration violations. Some were charged with marriage fraud, illegal reentry, and other relatively low-level criminal offenses.
- The majority of this group has been deported.

## Alien Absconder Apprehension Initiative (12/01)...Operation Endgame (3/04)

- INS/DHS announces initiative to arrest and deport over 400,000 immigrants with outstanding deportation orders (Absconders)
- The FBI enters the names of all Absconders into the National Crime Information Center (NCIC) database. 6,000 men from Al Qaeda countries are among the names entered. Names entered into NCIC appear to Police much the same way fugitives do.
- Absconders are pursued with similar Gestapo style tactics as “Special Interest” detainees, this time with some documented help from local law enforcement.

## Operation Tarmac (12/01)

- INS raids airports around the country with other law enforcement agencies, arresting more than 1,000 undocumented immigrants and immigrants with past convictions. Some of those arrested are charged criminally with document fraud.

## Special Registration (NSEERS) (10/02-12/03)

- The program required non-permanent resident men and boys age 16 and over from 25 primarily Muslim countries and North Korea to register with INS. Special Registrants were photographed, fingerprinted, interrogated, and some were detained. As a result of Special Registration approximately 2,000 men from New York and 14,000 nationwide were put into deportation proceedings.

## Demore v. Kim (04/2003)

- Issue: Supreme Court case that reviewed the constitutionality of *mandatory detention* – the indefinite incarceration of a noncitizen while in deportation proceedings, regardless of whether s/he is a risk of flight or threat to society, solely because the noncitizen belongs to a blanket category (in this case, “aggravated felons”).
- Facts: Hyung Joon Kim, a national of South Korea, immigrated to the U.S. at age 6, became a greencard holder, and got convictions for burglary and petty theft as a young man. He was placed in deportation proceedings after completing his sentence, and held without a bond hearing as an “aggravated felon” (mandatory detention under §1226(c)). He successfully challenged the constitutionality of the detention, and a federal court ordered the INS to release him.
- Ruling: The Justice Department appealed this decision up to the Supreme Court, and in April 2003 the Court decided 5/4 to reverse the federal court’s ruling and uphold the constitutionality of mandatory detention based on class. This was the first time since Japanese internment that the Supreme Court upheld the government’s right to blanket incarceration.

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<sup>1</sup> See Office of Inspector General Report (<http://www.usdoj.gov/oig/igspecr1.htm>)

### **Operation Predator (10/03)**

- A major initiative designed to apprehend and deport non-citizens with past child sex-related offenses (who had served their time). “Predator” used the same tactics as the Absconder Initiative and the “Special Interest” sweeps, including visits to the workplace and home. Gathered information from Megan’s Law databases of sex-offenders
- DHS claims that the program is “designed to protect young people from...predatory criminals...and those who exploit young people.”<sup>2</sup> In truth, the operation nabbed people with sex offenses that included low-level statutory rape convictions (consensual relationships with minors) from their teenage years for which they served no time.

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<sup>2</sup> BICE Website- [http://www.ice.gov/graphics/enforce/ops/predator\\_content.htm](http://www.ice.gov/graphics/enforce/ops/predator_content.htm)

## Definitions

### **DEPORTATION/REMOVAL**

Expulsion of a noncitizen from the United States. Persons who can be deported include noncitizens (including greencard holders) with past criminal convictions; visa overstays; refugee/asylum seekers; and those who entered without inspection (jumped the border).

### **EXPEDITED REMOVAL**

Piece of 1996 laws meant to deport “inadmissible” (not allowed entry into the US) immigrants without a hearing before an immigration judge. Expedited Removal especially applies to asylum seekers, although the process may also be applied to criminal aliens. Under expedited removal, individuals can be removed on an order issued by an immigration officer at the border, without the opportunity to go before an immigration judge. The U.S. Immigration and Naturalization Service (INS) began implementing the expedited removal provisions of IIRIRA on April 1, 1997

### **ABSCONDER**

A person with a prior deportation order that knowingly or unknowingly did not leave the country. Most absconders do not realize that they are absconders and merely believe that they are undocumented. They are one of the most vulnerable categories of deportable immigrants. Many local law enforcement agencies categorize them as fugitive felons for arresting purposes. Once detained, absconders can be deported immediately and do not get a hearing in front of an immigration judge. Attorney General Ashcroft launched the “Absconder Apprehension Initiative” in January 2002 to locate and expel all absconders, and began with those from “Al Qaeda” countries. Currently the government has categorized more than 400,000 noncitizens from across the world as alien absconders.

### **SPECIAL REGISTRATION**

“Call in” part of NSEERS program; implemented by John Ashcroft and the Department of Justice in October of 2002. The program required non-permanent resident men and boys age 16 and over from 25 primarily Muslim countries and North Korea to register with the immigration service. Countries subject to Special Registration: Iran, Iraq, Lybia, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morroco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Pakistan, Saudi Arabia, Bangladesh, Egypt, Indonesia, Jordan, and Kuwait. Close to 2,000 men were put into removal proceedings in New York City as a result of this program and 13,800 nationwide.

### **NATIONAL CRIME INFORMATION CENTER (NCIC) DATABASE**

The nationwide computerized database was originally created to enable federal, state, and local law enforcement to identify suspected criminals with outstanding warrants. In 2002, Attorney General Ashcroft authorized using this criminal tool for immigration purposes, by entering the names of absconders and individuals who did not comply with special registration into the NCIC system.

### **CRIMINAL ALIEN**

potentially any non citizen at risk of deportation for a past conviction (even green cards holders). Non-citizens may be deported for most crimes, even if they never served a day in jail. A “criminal alien” may be undocumented, applying for green card, or a green card holder with U.S. citizen family. A wide range of offenses can make someone a “criminal alien” – including a single marijuana conviction, a shoplifting violation, or even admission to a crime without ever being convicted. Criminal aliens are typically deported *after* they have served their sentence. Deportation is *not* part of the criminal sentence, and criminal courts and prosecutors nationwide have fought to ensure that they are not obligated to warn a non-citizen that a guilty plea may result in deportation.

## Definitions

### **AGGRAVATED FELONY**

A specific category of criminal aliens. The term “aggravated felon” is an artificial immigration category and not part of the criminal code. Some aggravated felonies are neither aggravated nor felonies. Aggravated felonies include most drug crimes and almost anything that can get you a sentence of 365 days or more. Immigrants with post-1996 aggravated felony convictions have virtually no options to fight their case. They are subject to mandatory detention and mandatory deportation. Aggravated felons are barred from returning to the U.S. for life, even if they have family here, and may never apply for US citizenship.

### **DETENTION**

Basically – jail. People are detained at every step of the immigration “process”: (1) awaiting adjudication of asylum or adjustment applications; (2) picked up and jailed without charges; (3) pending immigration proceedings; (4) after being ordered deported, while BICE is actively trying to remove; and (5) sometimes *indefinitely*, where BICE knows it may not be able to deport someone with an order of deportation

*Mandatory detention* (incarceration without the chance to apply for bond) applies to most people with past criminal convictions, asylum seekers, and all noncitizens considered “inadmissible” (people physically in the U.S., but never admitted legally at a port of entry). Detainees are housed in over 300 county jails, private prisons and federal facilities nationwide, often held with the general criminal population. They may be transferred from one part of the country to another, without regard for access to family and counsel.

### **SPECIAL INTEREST DETAINEES**

Refers to a group of mostly Arab, South Asian, North African and Muslim detainees, who were held initially under suspicion of terrorism, and then on mostly minor immigration charges after September 11<sup>th</sup>. None of the special interest detainees was ever charged with activities related to September 11<sup>th</sup>. Special Interest detainees comprise only a fraction of the detained population, but their mistreatment was glaring. What categorized special interest detainees were the use of FBI clearances prior to immigration court, secret immigration hearings, refusal of the government to release their names, and automatic stays of judge’s orders of release or bond.



# HOW ARE IMMIGRATION LAWS ENFORCED LOCALLY?

(NEW YORK FOCUSED FACTSHEET)

## In Courts

In New York City, up to 85% of the criminal docket is settled by a plea. Noncitizens taking pleas typically do not know that their conviction may result in deportation. Deportation is a surprise punishment, unveiled on the day an immigrant finishes her sentence and thinks she is returning home.



- Defense attorneys, prosecutors and judges are not liable if they fail to warn a noncitizen about deportation because immigration laws are a “civil” matter.
- The government’s immigration attorneys have created trainings and manuals to teach prosecutors around the country how to get convictions that will lead to deportation.
- Criminal courts assist in deportation by sharing files – including unsubstantiated pre-sentencing reports – with immigration authorities.

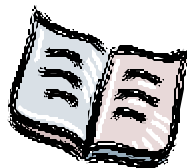
## At Home & On the Streets

- Abusive partners use the threat of deportation against their domestic violence victims.
- BICE offers immigration tip lines to the public to report illegal and criminal aliens.
- Homeland Security sponsors community forums on “anti-terrorism” with the help of groups including the Guardian Angels.
  - After 1996, the Justice Department required Memos of Understanding between INS and police before the latter could enforce immigration laws. A new DOJ opinion issued in 4/02 asserted that police have the inherent authority to enforce immigration laws. The matter is being litigated.
- NYPD considers “Absconders” to be felons and actively aids in their apprehension. Countless Absconders have been detained by police at routine traffic stops.
- Bloomberg’s Executive Order 41 allows local/immigration cooperation for people “suspected of illegal activity.” This loophole would include most people now detained.



## At Schools & Universities

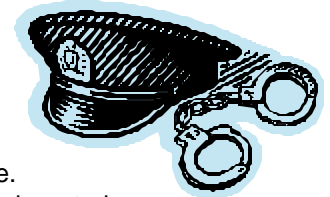
- The SEVIS program: Universities are actively sharing student information with Immigration. Schools in NY have referred immigrants to the Joint Terrorism task force.



## In Jails & Prisons

There are at least 8,000 foreign born inmates in the custody of NYC Department of Corrections.

- Immigration agents are stationed at Rikers, where they racially profile inmates who look or sound foreign-born and interview people about their birthplace to determine who may be a noncitizen. “Holds” are placed on potentially deportable inmates, to transfer them into immigration detention when they finish their time.
- Prisons upstate house the federal **Institutional Removal Program (IRP)**, where noncitizens complete their deportation proceedings while they are still serving time. Ironically, most people getting deported, including people in IRP, do not get free attorneys to help them fight their case because it is a “civil” rather than “criminal” proceeding. Law libraries in most jails and prisons lack basic immigration law books.
- New York also has a **Conditional Parole for Deportation Only (CPDO)** program where noncitizen inmates serve ½ of their minimum sentence for a nonviolent offense OR the minimum for a violent offense *if they agree to get deported*. The program is poorly managed and inmates are poorly informed. Many inmates do not understand that they are agreeing to deportation when they request CPDO. And once they sign up for CPDO, there is no guarantee that they will get deported speedily.
- The Division of Parole red flags immigration holds on their databases.
- BICE uses Megan’s law databases to identify noncitizen “sex offenders” for Operation Predator.



## At Work

- Workplace raids by immigration continue locally, sometimes prompted by employers in response to workers’ organizing efforts.
- Social Security no-match letters.



## At Public Agencies

- The Department of Motor Vehicles is referring cases directly to BICE and BCIS; effectively terminating some asylees’ status based duplicate licenses, etc.
- It is unclear whether absconders are safe accessing public services connected to crime databases.

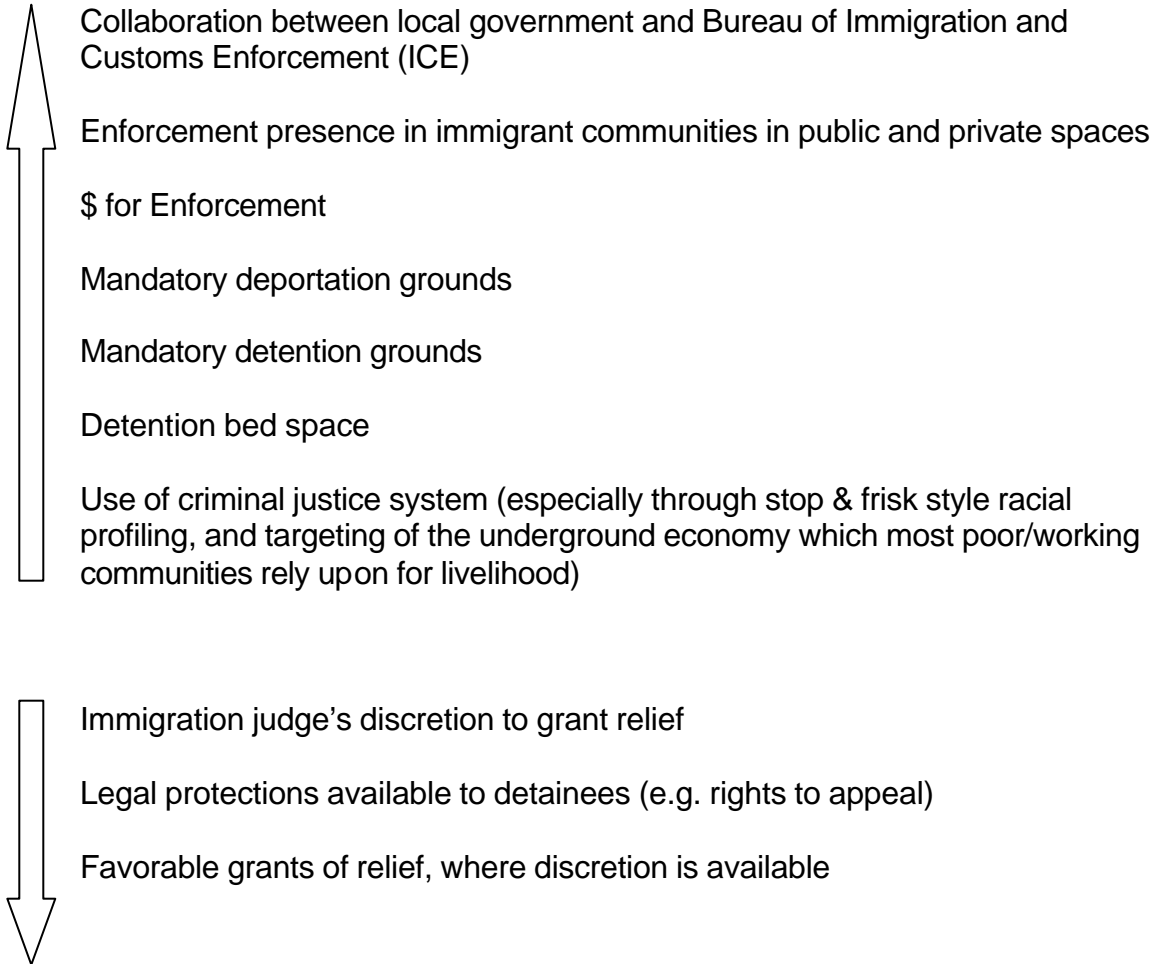
## **FEDERAL**

Immigration Enforcement cooperates at the federal level with:

- Federal Aviation Administration
- U.S. Coast Guard
- Federal Bureau of Investigation
- Drug Enforcement Administration
- U.S. Marshals Service
- U.S. National Drug Intelligence Center
- U.S. Customs
- Bureau of Alcohol, Tobacco and Firearms (ATF)
- Bureau for International Narcotics and Law Enforcement Affairs
- Office of International Criminal Justice

# IMMIGRATION ENFORCEMENT

## CURRENT STRATEGIES, FUTURE TRENDS



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## PATRIOT 2 The Government's Anti-Immigrant Agenda

The Domestic Security Enhancement Act (Patriot 2) would have furthered the creation of an immigrant underclass by explicitly targeting immigrant economies and communities. The draft bill proposes to criminalize new patterns of immigration, and create a full-time presence of the "immigration police" in communities.

### ❖ At Home

- Creates new reasons for an immigrant to fear seeking emergency help from public servants (Section 311)
- Creates incentives for business owners to report "suspicious" consumers (Section 313)

### ❖ On the Street

- Deputizes local law enforcement as *de facto* immigration agents
- Expands the tools available for and the consequences of police harassment; increases likelihood that a frivolous stop & frisk will result in deportation (Section 311)

### ❖ At Work

- Harms immigrant workers by protecting employers from civil liabilities if they report "terrorist" activities to the federal government (Section 313)
- Targets and criminalizes the informal immigrant economy.
  - Informal finance (e.g. Hawalas) become money laundering (Section 422)
  - Increased criminal penalties for informal employment and services, such as assisting an undocumented immigrant with rent (Section 502(c))

### ❖ In Courts & Prisons

- Increasingly makes deportation into a quasi-criminal procedure *without* criminal protections (Sections 322, 501 and 504)
  - Government can threaten defendant with deportation, extradition or denaturalization in order to obtain guilty pleas and to interrogate
  - Deportation becomes part of plea agreement in federal court system
- Heightens the ability of the government to railroad people through the criminal/immigration system
  - Attorney General can exile an immigrant without affording him/her a day in any court (Section 504)
  - Government can use immigration holds to obtain information for criminal investigation and prosecution (section 201)
  - Government can coerce defendants into guilty pleas by threatening them with terrorism-related charges
- Retroactively creates new consequences for guilty pleas
- Expands the classes of people subject to life-long parole (Sections 408 and 410)
- Allows the Attorney General to expel an immigrant to a country or region completely foreign to that individual (Section 506)
- Arrest may effectively equal indefinite imprisonment and life exile for any immigrant

**Patriot 2 is what the Justice Department *wanted* to do. Although it was never introduced, the government seems to be introducing pieces of PATRIOT 2 into legislation.**

## **The Clear Act /H.R. 2671**

### **Background**

The *Clear Law Enforcement for Criminal Alien Removal Act* was introduced in the House of Representatives on July 9,<sup>th</sup> 2003 by Rep. George Norwood (R-Georgia). Since it's introduction, the bill has been endorsed by some national law enforcement organizations including the National Sheriffs' Association, the Law Enforcement Alliance of America, the Southern States Police Benevolent Association, and Friends of Immigration Law Enforcement. However, most urban law enforcement agencies have opposed this bill, including NYPD and LAPD. Currently, it is supported by **118** members of Congress and over 20 local, state, regional, and national law enforcement organizations

### **What The CLEAR ACT Will Do**

- a. A bipartisan bill that asks for America's 600,000 local and state law enforcement officers to be given the authority to enforce federal immigration laws
- b. Effective 2 years after the date of the enactment of this Act, a State (or political subdivision of a State) that fails to have in effect a statute that expressly authorizes law enforcement officers of the State, or of a political subdivision within the State, to enforce Federal immigration laws in the course of carrying out the officer's law enforcement duties shall not receive any of the funds that would otherwise be allocated to the State under section 241(i) of the Immigration and Nationality
- c. Within 180 days of enactment, DHS must enter all names of immigration violators into NCIC, a national *criminal* database used by law enforcement officials; if undocumented immigrants are stopped by authorities and their names come up on this list, they will be arrested and detained
- d. Local Police Departments that comply will be provided with the training, data and funding to enforce immigration laws
- e. So far it is being proposed as a voluntary program and is being pushed to be tacked onto any progressive immigration reform proposal
- f. Part of the CLEAR Act asks for criminal penalties for immigration violations such as heavy fines, the seizure of money and property by the government for long-term overstayers, and up to a year in jail
- g. Asks for \$10 million increases to the deportation budget every year until the year 2011, at which time the deportation budget will be \$80 million dollars

\*\*There are two Representatives co-sponsoring this bill from New York State: Rep. Sue Kelly of the State's 19<sup>th</sup> District and Rep. John McHugh of the State's 23<sup>rd</sup> district; please refer to the complete list of sponsors

## The Dangers of CLEAR

- a. Racial profiling: police officers would target specific groups of people based on their race/ethnicity/religion; extra power will lead to abuse; this act will bar people from filing racial profiling complaints against police officers in matters of immigration
- b. Would cause a shift in priorities for policemen; they would actually have less time for their main tasks of crime fighting and prevention and will stretch their limited resources
- c. Immigrants would be less likely to report crimes (ie. Domestic Violence), use emergency services (ie. Fire Department and EMS) in fear of deportation
- d. CLEAR Act undermines efforts of local law enforcement agencies to work collaboratively with immigrant communities to report and investigate crimes
- e. Populations that will be most affected by CLEAR are current **criminal aliens and absconders**
- f. Criminalizes all undocumented immigrants even though immigration violations are deemed civil violations under the Immigration and Nationality Act; millions of immigrants will be channeled through an already overstretched criminal justice and detention system
- g. Proposal does not target real criminals, but people who have overstayed their visas and international students who have disenrolled from universities
- h. CLEAR requires the Department of Homeland Security add all immigration violators names to the National Crime Information Center (NCIC) database, which holds the name of *criminal* offenders
- i. It is being pushed to be tacked onto any progressive immigration reform proposal by supporters of the bill
- j. The United States will become more polarized and segregated as immigrants will not seek to live in areas that have agreed to adopt the principles of the CLEAR Act, and native groups will lay claim to America as a land not meant for immigrants

# **CRIMMIGRANT JUSTICE?**

## **Bills that Could Tighten Criminal Immigration Enforcement**

On the heels of the leaked draft of the Domestic Security Enforcement Act of 2003 ("Patriot 2"), its supporters divided DSEA provisions in order to divide the opposition to the bill and pass it piecemeal.

### **SMITH ACT**

Congressman Lamar Smith introduced the Removal of Terrorist Criminal Aliens Act of 2003" (H. R. 3106) in September of 2003. The Smith Act would do the following:

- Authorize expedited removal by DHS for LPRs/non-LPRs with a broad range of convictions, after a wholly discretionary DHS certification that they are "engaged in any activity that endangers the national security of the United States." This would mean that DHS would be able to deport virtually anyone with a conviction without access to courts, any opportunity to apply for discretionary relief, and without access to real judicial review.
- Allow DHS to more easily remove persons with final orders to any country that will accept them.
- Authorize deportation for non-LPRs if they are deemed to be a "danger to the national security."

### **VICTORY ACT**

- One month before Smith introduced his legislation, Senator Orrin Hatch introduced the Vital Interdiction of Criminal Terrorist Organizations Act ("VICTORY Act"). The VICTORY Act would do the following:
- Introduce "narco terrorism" into the state's vocabulary, in order to tie drug offenses with terrorism. The crime of "narco-terrorism" would include longer mandatory minimum sentences for possession, manufacture, distribution, import or export of any amount of any controlled substance that "directly or indirectly" aids a "terrorist organization."
- Ban hawallas - a traditional form of community banking used mainly in Middle Eastern communities. This would further cripple the informal economy networks upon which immigrant communities rely.

How do these Acts fit into the bigger picture of growing immigrant apartheid in the U.S.?

- The Smith and Victory Acts work together to further criminalize immigrants and to hasten their expulsion from the US. In the absence of any standards regarding the "national security certification" that would trigger expedited removal. Thus, Victory Act's equating drug convictions with terrorism could lead to immigrants with drug convictions automatically deported in these "expedited" proceedings.

## **SUPREME COURT CASES**

The Supreme Court will soon hear three immigration cases that will affect thousands of immigrants at risk of immigration detention and deportation.

### **Leocal v. Attorney General**

Mr. Leocal came to the U.S. from Haiti more than twenty years ago. Although he was a lawful permanent resident (LPR) for fifteen years, and although he is married to a U.S. citizen wife and had four children here, he was deported in 2002 after one Florida conviction for "Driving under the influence with serious bodily injury". The Board of Immigration Appeals had ruled, and the Eleventh Circuit agreed, that his conviction is a "crime of violence" aggravated felony. Other lower federal courts have disagreed with the Eleventh Circuit on whether drunk driving offenses are crimes of violence. Under the 1996 immigration laws, aggravated felonies make a lawful permanent resident deportable without any chance of applying for a waiver of deportation. The Supreme Court's decision in Mr. Leocal's case will likely impact the lives of many other immigrants who have convictions for other offenses that may be considered "crimes of violence".

### **Benitez v. Wallis**

This case will decide whether immigrants who entered the United States without documents may be indefinitely detained after being ordered removed.

Mr. Benitez is a Cuban refugee who was paroled into the U.S. in 1980. This means that he was allowed to enter the US, but was not officially "admitted." After he was convicted on several counts in 1993, INS (now BICE) revoked his parole and an immigration judge ordered his deportation. Mr. Benitez has been languishing in immigration detention because Cuba has not agreed to take him back. So his detention has no end in sight. The government claims that it has the authority to jail him indefinitely – even if they could never actually deport him and even if this means that he will be jailed for the rest of his life. In the *Zadvydas v. Davis* case in 2001, the Supreme Court said that the government must not indefinitely detain non-citizens if it's unlikely that it will be able to carry out the deportation. In Mr. Benitez's case, however, the government claims that *Zadvydas* does not apply to people like Mr. Benitez who were never officially admitted into the U.S.

### **Jama v. INS**

In this case, the Supreme must decide whether a person may be deported to a country whose government has not agreed to receive him.

Mr. Jama is a native of Somalia who came here as a teenage refugee in 1996. After a fight with another Somali man, he was convicted of a Minnesota assault and ordered deported as one who was convicted of a "crime involving moral turpitude". Somalia is ravaged by war and famine, lacks a functioning central government, and has no diplomatic relations with the United States. In short, Somali is in no position to consent to Mr. Jama's return, let alone his safe return. Nevertheless, the U.S. has dropped off in Somalia approximately 200 Somalis since 1997. Mr. Jama is arguing that the immigration laws require the Somali government's consent before sending him back. His case could decide the fate of thousands of other Somalis facing deportation.



# What You Should Know About the STEP Act

The **Stop Terrorist Entry Program (STEP) Act** of 2003 (H.R. 3075) was introduced by South Carolina Representative Gresham Barrett (Republican) on September 11, 2003. Though the **STEP Act** only has two co-sponsors – which means that it is unlikely to pass – its creation and introduction is a clear demonstration of the racist and xenophobic ideas and politics that are active with US policy-makers and the US government.

In addition, the **STEP Act** could be used as a bargaining tool by Congresspeople in order to portray other proposals, such as the CLEAR Act, as moderate.

## What the STEP Act would do:

- Amend the Immigration and Nationality Act to bar the admission of immigrants from countries determined to be state sponsors of terrorism, “and for other purposes.”

## It would do this by:

- Not allowing any nonimmigrant or immigrant visa be issued, or nonimmigrant or immigrant status be provided to anyone who is a national of or resides in a “country that is determined to be a state sponsor of terrorism.”
- This prohibition includes: filing immigration family petitions; non-immigrant visas; student visas; and more.

**Countries named by the  
State Dept. as state  
sponsors of terrorism:**

- Cuba
- Iran
- Iraq
- Libya
- North Korea
- Sudan
- Syria

**What would happen to people  
from these countries  
already in the US?**

- The status of anyone in the US as a ‘nonimmigrant’ will expire within 60 days of the enactment of the STEP Act. This would call for immediate detention and removal of all nonimmigrant visa holders.

**What can you do to oppose  
the STEP Act?**

- Depending on your own current situation or involvement with organizations, the tactics you choose could vary. Some examples of things you could do are: write/fax/call your congressperson telling them to oppose this outrageous and racist proposal; support the work of local immigrant rights organizations; speak out and talk with friends and community members about this and other proposals; know your rights!

**This fact-sheet was produced by:**  
*Center for Constitutional Rights: [www.ccr-ny.org](http://www.ccr-ny.org)*  
*Asian American Legal Defense & Education Fund: [www.aaldef.org](http://www.aaldef.org)*  
*Families For Freedom*

## Deporting the “Bad” Immigrant by Mark Winston Griffith March 03, 2004

Recently a dear friend of mine observed that immigrants who broke the law deserved to be deported. In her eyes, certain elements in her community - like a cousin of hers who was busted and sent packing back to the Caribbean by American authorities for selling drugs in Washington Heights - were blights on the reputations of upstanding, hardworking folk who had arrived from distant shores seeking a better life.

Ironically, my friend's mother had lived and worked illegally in New York long enough to arrange for my friend and her sisters to establish residency here. While of course she never followed her cousin into the drug trade, a strict application of my friend's moral formula to her own immediate family history would probably find her today back in the Caribbean, without the benefit of the Ivy League degrees, corporate resume and Brooklyn brownstone she now enjoys.

### Permanent Exile As Punishment

Behold the good immigrant/bad immigrant paradox. Until recently, it was little more than one of the oldest and slipperiest myths to wash up on the shores of the New World; the idea - often supported by xenophobic, racist and class-based notions - that certain newcomers are poster children for the American dream, while all others are shifty predators who need to “go back where they came from.” Ironically, in a city whose identity is proudly synonymous with the Statue of Liberty and taking in the world's “tired” and “poor”, it's as if immigrants arrive under moral probation. One false move is proof that they are pathologically unfit for “democracy” and capitalist consumption.

Immigrant groups and sub-groups have been stereotyped and treated with a different set of standards ever since the Mayflower drifted in. But what is relatively new and gaining widespread social acceptance is the legal enshrinement, through mandatory detention and deportation practices, of the view that being an immigrant is itself separately punishable.

According to a small chorus of immigrant activists, New York communities are being destabilized while a second-class status is enforced by the federal government using the fear of permanent exile. In 1996, years before the [Patriot Act I](#) and [II](#) or the [Office of Homeland Security](#) were activated, a set of landmark immigration laws were put in place by the Clinton Administration that essentially stripped immigrants of some of their most basic rights. The [Anti-terrorism and Effective Death Penalty Act](#) and the [Illegal Immigrant Reform and Immigrant Responsibility Act](#) vastly expanded the grounds for deportation to include, roughly speaking, past convictions, an accumulation of relatively minor repeat offenses and almost anything that requires a year or more in jail. At the same time these laws created new conditions for mandatory detention and deportation and denied certain criminal aliens and even asylum seekers the right to appeal deportation orders.

### Ripped From Their Families

Subhash Kateel and Aarti Shahani, staff organizers for [Families for Freedom](#), an immigrant defense network of New Yorkers facing deportation, maintain that detention and deportation excessively injure thousands of households every year, ripping people from their families. One of these households belong to Carol and Linden McDonald, a Guyanese-born couple who have been married for ten years and have together raised a child in Bushwick. According to Families for Freedom, “Linden, who is a Rastafarian, was arrested with a joint. His lawyer told him to plead guilty without advising him that he could be deported. A day after Linden began his two-week sentence, Immigration came to him in Rikers. They marked him for deportation, and transferred him to a Louisiana jail.” Carol and her daughter have not seen Linden, a green card holder, since September 2003 and don't know when they will ever see him again.

Reportedly, stories like this are common, in which defendants, unable to afford high-priced lawyers, enter into plea bargains unaware of the consequences of their actions because even judges are not required to

disclose this information. Many of these cases cannot be appealed or reviewed by a federal court and detentions can last years. And once deported, there is no such thing as a second chance. Likewise, if you received, for instance, probation for an offense ten years ago, dutifully served your sentence, became a model citizen and then tried to go on a trip outside the country, you too could find yourself detained and deported.

In other words, even as a permanent resident, you face a form of double jeopardy; if you commit a crime not only do you pay your debt to society as determined by the criminal code, but then, strictly on the basis of being an immigrant, you are forever purged from society.

Carol McDonald, along with another woman facing a similar predicament with her husband, wrote an open letter to New York elected officials complaining that “Immigration agents are stationed at Rikers to screen non-citizens...and hand them off for deportation...Detention and deportation have ruined our lives...(Our husbands) used to help with everything – pick up the kids from school, take them to the library, the park, McDonalds....We’re both terrified of people saying we are bad parents and taking our babies away.”

Deportation is, in effect, a life sentence. As Carol explains, “All our personal ambitions – to get better jobs, make real careers – are out the window...In detention you make \$1 a day for full time work. Back home in the Caribbean, no one will hire a US deportee.”

## A Chilling Effect

The implications for New York are far-reaching. According to Families for Freedom, 15 percent of American families are “mixed status”, meaning that at least one parent is a non-citizen and one child a citizen. In New York City, according to the New York Immigration Coalition, two thirds of all families have an immigrant parent and an American-born child. Deportees lose their social security benefits and their family members are not allowed to collect them.

Families for Freedom goes on to argue that immigrants increasingly risk deportation “when they turn to public servants for help... They are afraid to turn to hospitals, schools, fire departments and police officers. For example US born domestic violence victims report their abusers in one out of two situations; immigrant victims report one out of four instances and undocumented immigrant victims in just one of seven instances.”

## Commensurate with the Crime?

The website for the federal agency, Immigration and Customs Enforcement (chillingly referred to as “ICE”), proudly extols the virtues of deportation and the kinds of actions that have led to over a million people from 120 countries being deported between 1996 and 2002, with billions of dollars being spent to do so. These kinds of results are seemingly designed to help Americans feel they are safer, that the “war on terror” is being won at home. In the now famous memo to FBI Director Robert Mueller, Coleen Rowley, an FBI Special Agent and Minneapolis Chief Division Counsel, [wrote](#) “After 9/11, FBI Headquarters encouraged more and more detentions for what seem to be essentially PR purposes.”

There are other cynical observations to be made. For example, the Bush administration’s newly proposed [Temporary Worker Program](#), which sets up a legalized employment system for newcomers and immigrants currently living in the U.S. without authorization, is an explicit acknowledgement that there exists, in Bush’s own words, a “massive” underground economy thriving on undocumented immigrant labor, an economy in which all Americans enjoy the benefits of illegal immigration. The Temporary Worker Program, while offering no paths to citizenship, reinforces the concept of immigration as an indentured servitude mill. If you were prone to conspiracy theories, you could reasonably conclude that the specter of deportation functions to keep America’s imported servant class in line and scared straight.

Despite these views, politically speaking, deportation abolitionism or advocating for the rights of immigrants with criminal convictions remains about as unpopular and quixotic as it gets. Even many of the individuals fighting deportation are quick to point out that “yes, many immigrants do need to be kicked out – just not me.”

Criminal activity should be punished and the punishment should be commensurate with the crime. It's also important to remember that behind the proud legacy of virtually every group of people that has arrived in this country over the last several hundred years, there has been a not so pretty tale of survival by any means necessary. Dust it off a bit and call it "entrepreneurial spirit". Some refer to it as "pursuing the American dream". The bottom line is immigrants are no more, no less, "bad" than those born on this soil. It's time we had a social policy that can admit that.

*Mark Winston Griffith, executive director of Talking Democracy Media, normally writes the community development topic page for Gotham Gazette.*



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Gotham Gazette - <http://www.gothamgazette.com/article/immigrants/20040319/11/920>

## **Albany Social Security ID Checks Threaten Driver's Licenses**

By NINA BERNSTEIN

NY TIMES: March 18, 2004

<http://www.nytimes.com/2004/03/18/nyregion/18license.html>

New York State is threatening to suspend the driver's licenses of half a million drivers - 5 percent of the state's 10 million drivers, including thousands of immigrants working here illegally - because their Social Security information at the Department of Motor Vehicles does not match up with the data on file at the Social Security Administration.

The first 112,000 warning letters were sent out in recent weeks. Raymond P. Martinez, the state's commissioner of motor vehicles, said yesterday that the purpose was to systematically correct the department's database and to ferret out fraud, not to take driver's licenses away from illegal immigrants.

But it has generated waves of fear among immigrant groups, who protested the new policy at a rally at the State Capitol on Tuesday. Although New York is one of a dozen states that do not officially limit driver's licenses to legal residents, the commissioner acknowledged that by the end of the year the "data cleanup" would eliminate the driving licenses of all New York immigrants unable to prove that they have legal authorization to be in the United States.

Others who might be caught in the data sweep, officials said, include women who changed their name when they married or divorced, people who failed to provide a change of address, so-called deadbeat fathers trying to avoid child support enforcement and anyone with the bad luck to have had a Social Security number garbled by a clerk's typo, either at the state D.M.V. or in the Social Security Administration's database.

Mr. Martinez said motor vehicle personnel are expected to use case-by-case discretion on prosecuting people who provided a false Social Security number. Those who produce fraudulent documents will be arrested and charged with a felony, he said.

The letters being sent out warn drivers they have 15 days to contact the D.M.V. to clear up discrepancies and provide verifiable documents, including a Social Security card. So far, the response rate is running at 68 percent, with about 3.2 million records cleaned and 7.8 million to go, counting non-driver state ID's and learner's permits, officials said.

Almost a third of the letters have gone unanswered. At that rate, more than 150,000 licenses are likely to be suspended by the end of the project, which is estimated to cost \$740,000 counting computer time and multiple mailings, Mr. Martinez said.

Some advocates for immigrant rights said the impact would be devastating on thousands of workers like Lupe, a Mexican landscaper on Staten Island who uses a truck to earn the \$15,000 a year that supports his five younger children, three of them born in the United States. In a three-way call translated by Rev. Terry Troia, a pastor who directs a center for immigrant workers, Lupe, who has lived here for 12 years and who spoke on the condition of anonymity, said that after receiving the letter he was afraid he would be deported or imprisoned if he were to go in to the Department of Motor Vehicles.

To obtain a license six years ago, he said, "I presented my passport and my birth certificate, proof of my address." But for Social Security, "I invented a number," he added.

"It has horrible consequences for immigrant workers who are just trying to make a living," said Gouri Sadhwani, executive director of the New York Civic Participation Project, an immigrant and labor union advocacy group. "It's yet another way that local and federal officials are criminalizing immigrants."

Mr. Martinez responded: "We're not criminalizing anything. If they obtained it under fraudulent means, that's something they've already committed, that's not something we cooked up." He said the Motor Vehicles Department would not notify immigration authorities unless the driver had presented immigration documents that seemed suspicious and needed verification.

Restricting or expanding access to driver's licenses for immigrants has been a hotly contested political issue in statehouses across the country since 9/11. As possession of a photo ID became a prerequisite for entering many office buildings and

hospitals, for buying train tickets, wiring money and renting an apartment, a push to make driver's licenses more fraudproof has clashed with a campaign to uncouple the regulation of driving from immigration status. Michele Waslin, a senior immigration policy analyst for the National Council of La Raza, a Latino civil rights organization, said New York's move was part of a national trend of introducing new restrictions through policy changes rather than changes in the law.

"This is a public safety issue," she said. "If they're working, if they have to go to school, if they have to go to the hospital, they have to drive and it's in the public interest that they be licensed and insured drivers." "The Department of Motor Vehicles should not become an immigration agency," Ms. Waslin said.

States differ widely on how they handle the issue, according to Jay Maxwell, chief information officer for the American Association of Motor Vehicle Administrators.

"We would really like the federal government to step up to their role and decide how these people, who have been here for many years working and contributing to the economy, should be treated," he said. Talks with Mexico and Canada about the issue broke down after Sept. 11.

In most states, the Social Security number requirement was added as part of the nation's 1996 welfare overhaul to improve child support enforcement efforts. But it originally applied only to applicants who actually had a Social Security number.

Two years ago, officials said, New York's D.M.V. began requiring an original Social Security card, and demanding that applicants who instead show a foreign passport also produce a valid, unexpired visa.