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Exit Tragedy

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By John Hall and Marisa Cinclerano

Last year the United States deported, officially termed "removed," thousands of lawful residents—Green Card holders. Many of those "removed" committed nothing more sinister than minor misdemeanors that did not constitute felonies under criminal law. A lawful resident convicted of driving under the influence, for example, can be deported and permanently barred from re-entering the United States, even if the crime occurred many years ago, and the resident has rehabilitated himself or herself and has become a model member of the community. Even having a U.S. citizen spouse and children does not provide a basis for a reprieve.

Current immigration law, as revised during the 1990s, requires deportation for so-called "aggravated felons." On its face, this sounds reasonable. One problem, however, is the profoundly minorizing definition: "aggravated felonies" is a term of art in immigration law, not criminal law. Indeed, many of the offenses that fall within the definition of "aggravated felonies" are neither felonies nor aggravated. Thus, a lawful resident can be deported for such offenses as shoplifting and non-Felony battery. At least one individual has been deported for public urination (at a construction site where he was the supervisor); another has been ordered deported for pulling a woman's hair in an argument over a boyfriend. The other problem is the lack of discretion afforded to immigration judges. Even if the crime occurred years ago and the lawful resident has become an upstanding member of the community with a spouse and children, immigration judges have no authority to weigh these positive factors against the crime committed.

Those deported include homeowners, business owners, veterans, professionals, librarians, construction workers, nurses, taxpayers, employers, blue- and white-collar employees of all types. Individuals who have lived their entire adult lives in America, who are fiercely proud of America, who came to this country as children fleeing catastrophe, war and genocide, now find themselves shackled and deported, their lives ruined. Why? Because they pleaded guilty to a charge of public urination, or they get into a fight at a bar, or they were caught smoking marijuana when they were an undergraduate.

Chained, handcuffed, stripped from their families, they face peremptory and confusing immigration proceedings, and are sent back to countries with which they may have limited or no connection. Upon arrival in their "home" country (a country they may not have been born in or spent even one day in prior to deportation), they are handed $50 by U.S. authorities and sent on their way. They may not even speak the local language. From L.A. to Cambodia, or Guatemala, or El Salvador in a few days, terrifying and horrifying.

For many, deportation is a death sentence. Vigilantes and local authorities view deportees as criminal elements to be imprisoned or eradicated. Lacking contacts, money or employment, the deportees rely on money from their families—an often impossible burden on families in the U.S. who may have lost their breadwinner and are facing the financial catastrophes that accompanies deportation: eviction, foreclosure and homelessness.

This is how America has chosen to treat its lawful residents: with a policy so arbitrary, terrifying and discriminatory that lawful residents are suffering the same terrors and fears as those individuals in the U.S. illegally. Yet they are not illegal aliens. Lawful residents are our neighbors, our colleagues, our friends, spouses, teachers, professors. They are our soldiers fighting overseas, our police officers, firefighters, our students. They are, quite simply, "us" not "them."

How do we explain that this arbitrary and inhumane policy faces so little opposition within the U.S.? Perhaps the explanation lies with a general hardening of attitudes toward illegal immigration. Somehow lawful residents have been linked in the media and in popular imagination with "illegal aliens." An alien is an alien, a foreigner, regardless of status. In the rush to crack down on one, any sympathy for the other has been lost. And, let's face it, lawful residents don't vote, so few politicians see political capital to be gained by supporting the equitable treatment of foreigners. Since Sept. 11, this attitude of distrust, of "us versus them," has certainly not diminished with the immigration debate now often couched in terms of national security.

Another explanation for a lack of outrage over the mass deportation policy stems from the perception that those deported are violent thugs—members of street gangs. The media salaciously covers stories of Hispanic gangs such as Mara Salvatruchis that terrify Americans often living far from the urban slums where such gangs typically proliferate. However, a policy of deporting members of U.S. street gangs may be resulting in the international spread of such criminal organizations. Far from being an effective method of suppressing gang activity, deportation may simply be spreading the problem.

Another criticism is that the "aggravated felony" worthy of deportation? Do we want to deport someone, wreck their family, destroy their business, and cause the untold distraction of forced deportation, because they have a weak bladder?

Or is it finally time to revisit what offenses warrant the punishment of deportation? It is unconscionable that our friends, neighbors and spouses are being deported for minor infractions. It is time to return to a definition of "aggravated felonies" that once again reflects a popular understanding of that term; a small category limited to the most serious offenses.

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