

CONGRESS MUST AMEND THE IMMIGRATION DEFINITIONS OF “CONVICTION” AND “TERM OF IMPRISONMENT” TO CORRESPOND WITH CRIMINAL COURTS’ DEFINITIONS

THE PROBLEM: IMMIGRANTS ARE DEPORTED FOR CONVICTIONS THAT NO LONGER EXIST UNDER STATE LAW AND FOR WHICH THEY SERVED NO JAIL TIME

The definition of “conviction” under the immigration law was substantially broadened in 1996 to include many case dispositions that the criminal justice system never intended to be a conviction. For example, many states encourage courts and prosecutors to allow a person to enter a drug or mental health treatment program – and upon successful completion, any criminal charges are dismissed. However, the federal government treats these cases as a “conviction,” triggering removal. As a result of this change in 1996, immigrants are funneled into the immigration detention and deportation system for criminal cases where the person is not found guilty legally or where the case is dismissed and no longer exists on their state criminal record. When the federal government treats these types of dispositions as “convictions,” it undermines the state’s goal and interest in cost-efficient alternatives to incarceration that also strengthen communities. This is because, after a court determination that an immigrant is eligible for a rehabilitative or other diversion program, the immigrant will be transferred to immigration custody and lack access to the court instituted program.

Additionally, there is vast confusion for immigrants that land in deportation proceedings for these dispositions that are not considered convictions for the criminal justice system. Many criminal defense attorneys and criminal judges tell defendants that certain dispositions will not result in a conviction. Since this advice will conflict with the immigration’s definition of conviction, immigrants will apply for immigration benefits, such as green card renewal or citizenship, and travel internationally. Unfortunately, immigration authorities, when screening these immigrants for benefits and after international travel, will then use the broad definition of conviction to place them in deportation proceedings. Immigrants then endure an often worse and unbargained for punishment of deportation after relying on legal advice that their dispositions would no longer be considered “convictions.”

Further, the immigration law defines a “term of imprisonment” as any period of jail time ordered by a court, regardless of whether that jail sentence was suspended. Suspended sentences are court orders of jail time that are delayed by a judge to allow for the defendant to comply with an alternative to incarceration sentence. If the person successfully completes this alternative to incarceration sentence, the defendant does not have to complete the originally suspended jail sentence. In some states, criminal judges must impose this suspended jail sentence every time they want to impose a non-jail sentence (for example, for first time, low-level offenses like shoplifting). This is critical because a lawful permanent resident, refugee and asylee can be deported for certain offenses only if the immigration law’s definition of “term of imprisonment” is satisfied, and suspended sentences would meet this definition, even if the person didn’t spend a day in jail.

THE SOLUTION: Congress must amend the definition of conviction and sentence under immigration law so that it reflects common sense, proportionality, and the American system of justice.

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Amendments to the Definition of Conviction and Sentence

DEFINITIONS OF `CONVICTION' AND `TERM OF IMPRISONMENT' –

(a) Section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(48)) is amended—

(1) in subparagraph (A), by striking `court' and all that follows through the period at the end and inserting `court. An adjudication or judgment of guilt that has been dismissed, expunged, deferred, annulled, invalidated, withheld, or vacated, an order of probation without entry of judgment, or any similar disposition shall not be considered a conviction for purposes of this Act.'; and

(2) in subparagraph (B)—

(A) by inserting `only' after `deemed to include'; and

(B) by striking `court of law' and all that follows through the period at the end and inserting `court of law. Any such reference shall not be deemed to include any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.'

(b) EFFECTIVE DATE.-The amendments made by subsection (a) shall apply to convictions and sentences entered before, on, or after the date of the enactment of this Act.

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