

RESTORE A FAIR DAY IN COURT

Congress must change harsh, reactionary laws that tie judges' hands and force them to deport immigrants without ever being able to consider the circumstances of the person's case. These restrictions on due process are un-American because they prevent our justice system from stopping government actions that go too far. Their consequences are unnecessarily devastating families and undermining communities.

BACKGROUND: THE POWER TO HEAR A CASE AND "WAIVE" DEPORTATION

For decades, the government has had the power to deport immigrants who have been convicted of certain crimes (including those with lawful status or green cards). However, the law historically also gave them the opportunity to present their case before an immigration judge to ask for a pardon from deportation. The judge made a decision after considering individual factors, such as family and community ties, U.S. military service, and whether the person had turned their life around since the conviction.

Also, until 1990, sentencing judges in criminal court could consider whether deportation was an appropriate penalty for the offense (on top of the criminal sentence). If not, the judge had the authority to issue a "judicial recommendation against deportation" (JRAD), so that the conviction would not be a basis for deportation.

PROBLEM: RADICAL AND UNFAIR LAWS UNDERMINE OUR SYSTEM OF JUSTICE BY PREVENTING PEOPLE FROM HAVING A FAIR DAY IN COURT

In the 1990s, Congress curtailed the discretion of immigration and criminal court judges. Now, criminal court judges can no longer recommend against deportation. Immigration judges now can no longer grant waivers where the lawful permanent resident has a conviction classified as an "aggravated felony" under immigration law – and these "aggravated felonies" now include even decades-old, minor misdemeanor offenses. And they can no longer even consider granting visas to people who are otherwise eligible, if they have one of dozens of often minor offenses – even if they can prove deportation would cause hardship to citizen family members.

Judges' hands are tied: they can do nothing but order the person deported. They cannot consider how long a person has been in the U.S., how long ago or how minor their crime was, the effects on their citizen parents or kids, whether their small business would close, or any other good things they have done since their trouble with the law. Mandating such disproportionate, double penalties are un-American and violate basic notions of justice.

Moreover, the blanket definition of "aggravated felony" undermines the fairness of state criminal justice systems, because it creates grave collateral consequences for state convictions that neither a state prosecutor nor state judge can control. This is especially problematic for the plea-bargaining system upon which our criminal justice system has come to rely, because the collateral consequences are often far

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worse than the underlying criminal charge. Mandatory detention and deportation essentially become the mandatory minimum sentence for any of these offenses.

SOLUTION: CONGRESS MUST RESTORE IMMIGRATION AND CRIMINAL JUDGES' POWER TO CONSIDER EACH CASE AND DECIDE WHETHER DEPORTATION IS APPROPRIATE. THAT IS AMERICAN JUSTICE.

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We propose an overall waiver section applicable to grounds of inadmissibility and deportability of non-citizens. Current waiver provisions for the various grounds of inadmissibility and deportability vary widely in standards and applicability. Most create bright lines between eligibility and ineligibility that fail to account for the widely varying facts of each case. The existence of a waiver does not mean that it will be granted, and thus waivers should be available in all cases to account for individual circumstances.

MOST EFFECTIVE SOLUTIONS

❖ Simple Waivers Based on Family and Community Equities

- **SEC. XXX. WAIVERS OF INADMISSIBILITY.** Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting the following subsection (c)—

“(c)(1) Notwithstanding any other provision of law, the Secretary of Homeland Security or the Attorney General may waive the operation of any one or more grounds of inadmissibility set forth in this section (other than 3(E)) for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. [This section shall also apply to individuals otherwise eligible for relief under INA § 212(h).]

- **SEC. XXX. WAIVERS OF DEPORTABILITY.** Section 237 of the Immigration and Nationality Act (8 U.S.C. 1227) is amended by inserting the following subsection (d)—

“(d) Notwithstanding any other provision of law, the Secretary of Homeland Security or the Attorney General may waive the operation of any one or more grounds of removal for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

❖ Restoring Judicial Recommendations Against Deportation (JRAD)

- Section XXX of the Immigration and Nationality Act (8 U.S.C. XX) is amended by inserting the following subsection (X) -

SEC. XXX. JUDICIAL RECOMMENDATIONS AGAINST DEPORTATION.

Notwithstanding any other provision of law, the grounds of inadmissibility and deportability shall not apply if the court sentencing the alien for such a crime falling under such grounds shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien shall not be removed, due notice having been given prior to making such recommendation to the representatives of the interested State, DHS, and prosecution authorities, who shall be granted an opportunity to make representation in the matter.

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Alternative Solutions:

❖ Amendments to Lawful Permanent Resident Cancellation

➤ **OPTION 1: Removal of LPR Cancellation Aggravated Felony Bar**

Sec. XXX. Section 240A(a)(3) (8 U.S.C. 1229b(a)(3)) is amended as follows:

(3) has not been convicted of an aggravated felony for which the sentence imposed is five years or more.

Section 240A (8 U.S.C. 1229b) is amended by adding at the end the following:

(f) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS FOR URGENT HUMANITARIAN REASONS OR SIGNIFICANT PUBLIC BENEFIT- In the case of an alien otherwise eligible for cancellation of removal under subsection (a), except that the alien has been convicted of an aggravated felony that renders the alien unable to satisfy the requirement in subsection (a)(3), the Attorney General may cancel removal of the alien under such conditions as the Attorney General may prescribe, but only--

 ` (1) on a case-by-case basis for urgent humanitarian reasons, significant public benefit (including assuring family unity), or any other sufficiently compelling reason; and

 ` (2) after making a written determination that the cancellation of removal poses no danger to the safety of persons or property.'

Applicability.- This provision applies to proceedings that began before, on or after the date of enactment.

➤ **OPTION 2: Removal of LPR Cancellation Aggravated Felony Bar**

Sec. XXX. INA Section 240A(a) is amended by inserting the following:

(4) Waiver.- The Attorney General may waive the application of subparagraph 240A(a)(3) only if the conviction resulted in a sentence served of less than three years and the Attorney General determines that removal is not in the public interest or removal would result in hardship to the parent, spouse or child of the alien or hardship to the alien.

Applicability. This provision applies to proceedings that began before, on or after the date of enactment.

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❖ **Amendments to 10-Year Cancellation and VAWA Cancellation**

➤ **OPTION 1:**

Sec. XXX. REPEAL OF PER SE CRIMES BARS TO CANCELLATION ELIGIBILITY

(1) Sections 240A(b)(1)(C) and 240A(2)(A)(iv) are repealed.

Applicability. This provision applies to proceedings that began before, on or after the date of enactment.

➤ **OPTION 2:**

Sec. XXX. Sec. 240A(b)(1)(C) is amended to read as follows:

(C) has not been convicted of an aggravated felony for which the sentence imposed was five years or more during such period.

Sec. XXX. Sec. 240A(2)(A)(iv) is amended to read as follows:

(iv) the alien has not been convicted of an aggravated felony for which the sentence imposed was five years or more during period.

Applicability. This provision applies to proceedings that began before, on or after the date of enactment.

❖ **Amendments to Cancellation Bars based On “Clock Stop” Provision**

➤ **OPTION 1:**

Sec. XXX. REPEAL OF RULE FOR TERMINATION OF CONTINUOUS PERIOD-

(1) Section 240A(d)(1) (8 U.S.C. 1229b(d)(1)) (8 U.S.C. 1229b(a)) is repealed.

(2) Section 240A(d) (8 U.S.C. 1229b) is amended--

(A) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

Applicability. This provision applies to proceedings that began before, on or after the date of enactment.

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➤ **OPTION 2:**

Sec. XXX. Section 240A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)(1)) is amended to read as follows:

(1) Termination of continuous period. - For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end, except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 1229(a) of this title.

Applicability. This provision applies to proceedings that began before, on or after the date of enactment.

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