



## The delusion of deporting the country's troubles away by banishing “criminal aliens”

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On April 17 the Supreme Court handed down a ruling that limited some of the excuses the government can use for deporting people. At issue in the case, Sessions v. Dimaya, was the meaning of “crime of violence” in immigration law; immigration judges have relied on this very broad category to order some non-citizens deported as “criminal aliens.” The Ninth Circuit Court of Appeals ruled in 2015 that the category was unconstitutionally vague and therefore not a basis for deportation, and the Supreme Court’s 5-4 decision upheld the Ninth Circuit’s ruling.

The decision got a good deal of media attention. Time ran a headline claiming that the Court had “Dealt the White House a Big Blow on Immigration.” But this type of coverage probably exaggerates the ruling’s practical effect. The people most likely to be impacted are green card holders, while the current administration’s main change in deportation policy has been its increased targeting of undocumented immigrants *without* criminal convictions. Besides, two laws signed by Bill Clinton in 1996 leave the administration with the authority to deport immigrants, including green card holders, for any of a long list of “aggravated felonies” and “crimes of moral turpitude” — in some cases, for shoplifting, fraud or possession of relatively small quantities of marijuana.

All the same, the Court’s decision presents the nation with a chance to address a more fundamental issue: Is there really *any* reason for the US government to deport non-citizens with criminal records?

### “Banishment or exile”

It’s hard to make the case that these deportations are equitable. A US citizen convicted of a crime is released after serving prison time. A non-citizen may serve the same prison time but then is held in immigration detention — possibly for years — and subsequently deported. This is a sort of double jeopardy based simply on the place of a person’s birth.

US courts have gotten around the inherent inequity by creating a legal fiction. Based on a 1893 Supreme Court decision, Fong Yue Ting v. United States et al., the courts pretend deportation isn’t a punishment — it’s just an administrative procedure, they hold. In reality, of course, deportation often means that immigrants who have lived here for decades are separated from

their families and communities and sent to countries which they barely remember and where they may not even speak the language. In 1948, the Supreme Court itself recognized that “deportation is a drastic measure, and at times the equivalent of banishment or exile” (Fong Haw Tan v. Phelan, cited in the majority opinion on *Sessions v. Dimaya*).

In many cases deportation isn’t just unfair to the immigrants; it’s also unfair to their countries of origin.

“The U.S. has become a dumping ground for everybody else’s problems,” Donald Trump claimed in his first speech as a presidential candidate. “When Mexico sends its people, they’re not sending their best. . . . They’re bringing drugs. They’re bringing crime. They’re rapists.” But Trump had it exactly backwards.

Numerous studies show that immigrants have a significantly lower rate of criminal convictions than native-born US citizens. (Yes, this includes undocumented immigrants, according to analyses the conservative Cato Institute performed on prison data from Texas.) And when immigrants do commit crimes, they haven’t necessarily brought “criminal tendencies” with them. Immigrants’ children generally have higher conviction rates than their parents, more in line with those of the native-born, a strong indication that assimilation into US society makes people more prone to breaking the law.

So if immigrants slip into illegal activities after coming here as youths or small children, it’s usually not because they were born in other countries — it’s a result of the conditions and influences they experienced here in the United States. And yet, we “repatriate” them to places that have nothing to do with their involvement in crime.

### **Trump’s scare stories**

But even if the deportations are unfair, many people think that deporting immigrants with convictions is a no-brainer solution that reduces crime here.

In 2014 two law professors published the results of a study testing this assumption. They analyzed the effects of the government’s Secure Communities program, which was specifically designed to identify and remove non-citizens with criminal convictions. According to immigration authorities, more than 288,000 people with criminal convictions were deported through the program from October 2008 to May 2014. The study found “no observable effect on the overall crime rate.” This result “calls into question the longstanding assumption that deporting non-citizens who commit crimes is an effective crime-control strategy,” the professors concluded.

There are many reasons for this. We can see some of them in two scare stories the president likes to tell about immigration.

On the campaign trail, Trump frequently brought up the July 2015 shooting death of Kate Steinle in San Francisco by a homeless Mexican immigrant, José Inés García Zárate. Last November, a jury acquitted the suspect of all charges except illegal possession of a gun, apparently agreeing with the defense that the gun could have been fired accidentally. Still, the tragedy clearly wouldn’t have occurred if García Zárate hadn’t been in the United States. For Trump and his supporters the issue is simple: The man should have been deported.

The problem is that he *was* deported — five times from 1994 to 2009. Like many other deportees, he returned.

Following this logic, conservatives argue we need tighter border security to keep immigrants from coming back. Actually, in García Zárate's case, our massive and often brutal border security system worked exactly the way Trump and his supporters say they want. García Zárate was apprehended by Border Patrol officials as he tried to cross into the United States soon after his 2009 deportation. Charged with illegal reentry, he was imprisoned until March 2015 and would have been deported yet again if immigration authorities hadn't taken him to San Francisco to face decades-old drug charges. These were eventually dropped, and García Zárate, who apparently has mental health and substance abuse issues, was left living on the city's streets without any support services.

Trump's other scare story is about the growth of the MS-13 youth gang in the United States.

While García Zárate's multiple deportations failed to make anyone safer, deporting MS-13 members has actually made the world less safe. The gang was formed in Los Angeles during the 1980s by young Salvadorans who had fled a devastating civil war, one funded in part by the US government. In the early 1990s, immigration authorities started deporting suspected MS-13 members back to El Salvador, a country still in chaos as the conflict was ending. Cut off from family and work opportunities, the deportees often had few options other than to stay connected to gangs. As The New Yorker writer Jonathan Blitzer remarks, our deportation policies "took a local gang problem that was festering on the streets of Los Angeles and . . . turned it into an international crisis."

### **Can we learn from experience?**

The US government seems to have learned nothing from the experience: It continues to deport Salvadoran youths suspected of gang affiliations. In one case, reported by ProPublica's Hannah Dreier, the target is a teen who cooperated with Long Island and federal agents investigating gang activities. If the government succeeds, the gang is likely to murder the youth as an informer once he arrives in El Salvador — a result guaranteed to discourage other youths from cooperating with law enforcement.

So what should the nation do instead of deporting immigrants who've been arrested for crimes?

First, officials must recognize that our criminal legal system is plagued with bias and injustice. Incarceration breaks up families, hurts children and provokes a costly human rights crisis. Moreover, the country needs much more effective programs for reintegrating released prisoners into society. Other models such as restorative justice offer appropriate forms of accountability for a wide range of offenses and should be developed and supported.

Still, even the existing resources might have helped García Zárate overcome his problems if he'd been allowed to remain in the United States; a rehabilitation effort would certainly have made more sense than spending tens or hundreds of thousands of dollars on repeated prosecutions, incarcerations and deportations. As for MS-13, people with experience in rehabilitating gang members have emphasized to The New Yorker's Blitzer the effectiveness of after-school programs, vocational training, educational efforts and counseling services in containing MS-13's influence.

Unfortunately, the supposed need to remove “criminal aliens” is so firmly entrenched in our laws and our popular consciousness that common-sense proposals like these may sound hopelessly utopian. But we’re living in a period when minds can change quickly; goals that seemed utopian a few years ago — same-sex marriage, a \$15 minimum wage, Medicare for All — now have widespread support. It’s time to start confronting the national delusion that we can just deport our “troubles” away.