

### **The Problem with Deportation**

Deportation is a reality that not only affects non-citizens but citizens alike.

Deportation is used as a remedy to dissolve the United States of dangerous criminals and ultimately make America safer. The unfortunate reality is deportation worsens an already global problem that affects the United States directly. Many families have been ripped apart due to deportation and the ones that most suffer the most deportation are the citizens that are left behind. There have been many cases of permanent United States residents caught up in legal woes and not advised that a guilty plea would lead to their automatic deportation, leaving their spouses, children, many times all US citizens. These casualties are left without a father, mother, and many times left without any sort of support or care. Deportation evolved into the only solution for any unlawful activity committed by any person not of U.S citizenship despite legal status. Deportation has become a “go to solution” to the issues we currently face in the United States creating a global problem. The US government initially tried eliminating delinquency in America by forcing people out of the United States, in turn generating a felonious society engulfing the United States. According to the Immigration and Customs Enforcement statistics for 2013, over 216,810 convicted felons were removed from the United States.<sup>i</sup> Depending on their crime, the deportees are classified under three different levels: Level 1 are criminals convicted of violent crimes and major drug convictions, level 2 are individuals convicted of less violent offences, such as larceny, burglary and minor drug convictions, and lastly level 3 criminals are those convicted of other crimes.<sup>ii</sup> Most

deportees are people that classify the United States their home, many of which immigrated to America at an infantile age. Many of these people are brought to the United States as young children and due to circumstances beyond the control of a child, many of those children become adults that develop violent behavioral patterns and turn to crime as their only means of survival. The question to ask is whether deporting these people that call America home is really the best solution to ridding the United States of crime. In addition, is deportation allowing these criminals to create bigger networks of crime by placing them in further impoverished situations in which crime is the order of the day? Many of these people come primarily from Central and South American nations, areas in which crime and corruption are major issues that currently plague these nations. Sending career criminals back to these already damaged areas is essentially creating a more wide spread criminal network that ultimately destroys safety in the United States. These criminals do return, but they re-enter with more money and more power. Deportation eliminates the sense of security in the very country that created the “American Dream”.

### **The Effect on Families**

Having a father or a mother taken from a person’s life can permanently alter the psyche of that person; deportation takes someone away permanently. In the case of *Padilla v. Kentucky*, Padilla pleaded guilty to a drug charge but was not made aware that his plea would result in his deportation.<sup>iii</sup> Padilla was a legal resident of the United States for over 40 years, originally from Honduras.<sup>iv</sup> At the time of his conviction, he was a retired US Army veteran of the Vietnam War.<sup>v</sup> Jose Padilla has essentially lived his entire life in the United States and knew no life outside of it. He had established a family, and

was the breadwinner of his home. He was arrested while working as a truck driver in Kentucky, while having a valid trucker's license for the transportation of Marijuana.<sup>vi</sup> In a Brief of Petitioner No. 08-651, it is written; "he confronts a 'life sentence of exile from what has become home, of separation from his established means of livelihood for himself and his family of American citizens.' *Jordan*, 341 U.S. at 243 (Jackson, J., dissenting)."<sup>vii</sup> This case set a precedent for the sixth amendment right to adequate counsel and redefined collateral consequence if the plea leads to deportation.<sup>viii</sup> The case discusses the direct and indirect consequences of a guilty plea if suspect is not a citizen of the United States, but what the law does not take into consideration are the effects of deportation on the United States citizens in which their decision is affecting. In not one case summary related to *Padilla v. Kentucky* does it mention Jose Padilla's family. The reality was Jose Padilla was removed from his family. He was a supporting member of the family and all of a sudden, his family, which consisted of American citizens, was left without their breadwinner. This abrupt loss will leave a family shaken and ultimately traumatized. The life they once knew is over with no possibility of returning. Once deportation is finalized, the deportee loses their legal residency in the United States and can only return to the United States illegally. Therefore, if Jose Padilla had been deported, his family would have been left to fend for themselves, or travel with him back to Honduras, a land completely unfamiliar to most of his family. The initial plea of guilty and the consequence of deportation destroyed his family's sense of security and killed their trust in the American Dream.

Jose Padilla pleaded guilty to transporting Marijuana on the advice of his counsel, unaware that his guilty plea would automatically cause his deportation. This case was

decided in 2010, deportation as a collateral consequence was only recently redefined, specifically four years ago. Given that Jose Padilla set a new precedent in this matter, how many other families were unable to fight against their deportation? How many families were torn apart due to being the answer for non-citizen guilty pleas? How many American citizens suffered uncertain fates at the hands of misleading consequences?

Kovacs v. US is another case in which a man was deported due to a guilty plea, but in this case, Stephan Kovacs remains out of the United States.<sup>ix</sup> Stephan Kovacs was instructed by his counsel to plead guilty to misprision of felony in 1999.<sup>x</sup> He was told that this plea would have no effect on his immigration status as he was a permanent resident of the United States and had been one since 1977. Kovacs lawyer stated to him, "misprision of felony is not deportable".<sup>xi</sup> Kovacs had started his own business that mandated international travel; in 2009, Stephan Kovacs was denied entry into the United States because of his conviction in 1999.<sup>xii</sup> Kovacs returned to his native Australia and has since appealed the decision so he may reenter the United States, but has been continuously denied.<sup>xiii</sup> Despite his conviction of a non-violent crime, he was forcibly separated from his family, all of which are US citizens. As written in the Google Scholar case file, "His wife and children, all United States citizens, remain here. Kovacs' children have had to adjust their lives to carry on the family business."<sup>xiv</sup> Not only did Stephan Kovacs family have to readjust their lives and family structure by having their father and provider deported, but also his return is continually negated. This is yet another family whom was stripped of their security and trust in the American system. Deportation affects an entire family; it can change the entire foundation of a unit and alters their lives forever.

## **Deportation does not equal safer streets**

Deportation is justified by the concept of removing criminals from the United States and sending them back to their countries of origin, ensuring safety on American streets. This concept is not the reality of the world; the truth is a criminal will conduct criminal activity despite their location, unless rehabilitated or incarcerated. The punishment of deportation is just that; a criminal is relocated to a different country. More than likely, a criminal will return to the United States, hardened, and committing more crimes that are violent. It is obvious that criminals have no respect for laws and will do as they see fit, this includes returning to the United States despite the legality of that decision. Pedro Pones-Garcia illegally entered into the United States from the Dominican Republic in 1984.<sup>xv</sup> Pones-Garcia was convicted of cocaine possession in 1991 and was deported two years later.<sup>xvi</sup> Following his deportation, he reentered the United States and in 1995 was charged with the criminal sale of a controlled substance.<sup>xvii</sup> Based on the timeline of his rap sheet, Pedro Pones-Garcia had escalated as a criminal following his deportation and went from using narcotics to selling, as tends to be the trend for most non-rehabilitated drug users. The problem with deportation of criminals is that they are no longer under the radar of the authorities. Once they are deported, they are thought to be “someone else’s problem”, but in reality, they come back and create a bigger issue domestically. If Pedro Pones-Garcia had been monitored as is done with “American criminals” instead of being deported, there is a higher likelihood that he would have either been caught more quickly, or he would have been rehabilitated, either way it would have saved the lives of those he dealt narcotics to. Ultimately due to this situation, another drug dealer went unnoticed on the streets of America.

There are countless cases detailing the illegal reentry of criminals convicted of crimes and deported from the United States. In many of those cases, deportations led to bigger and more violent crimes due to the unchecked influences in other countries where corruption and crime is the order of the day. In the case of *US v. Saldivar-Munoz*, a product of deportation created an international concern. Juan Alberto Saldivar-Munoz was deported to his native Mexico in 2008 following a false impersonation conviction.<sup>xviii</sup> Shortly after Saldivar-Munoz's arrival in Mexico, he was approached by the Zetas cartel of Mexico to smuggle drugs into the United States from Mexico.<sup>xix</sup> It is a well-known fact that once a person has been approached by a cartel, their only options are to run, comply, or be killed. In this specific case, Saldivar-Munoz decided to run, made it back to the United States, and was reunited with his family that had remained in Oklahoma during his deportation.<sup>xx</sup> Once he was arrested, Juan Saldivar-Munoz stated, "He told the Sheriff he would be killed if he returned to Mexico. He also told Jonathon Pursley, who is both a Sheriff's Department employee and an immigration officer that if he were sent back to Mexico the Zetas would take him out. According to Mr. Saldivar-Munoz, Officer Pursley laughed and responded, "[Y]eah, I know, we trained them." *R.*, Vol. 2 at 106.<sup>xxxi</sup> Deportations are part of a vicious cycle that escalates crime on a global level. An immigration officer and Sheriff's Department employee acknowledged that known gang members were trained in the United States, and deported to their lands of origin reeking havoc on another population. Yet, they continued to create a presence and conduct criminal activity within the borders of the United States. Deportees continue to bring crime into the United States from their native lands, which begs the question, is deportation really the best solution in reducing crime in the United States?

### **Just because it cannot be seen, does not mean it is not there**

Deportation from the United States is helping in the international narcotics and gang struggle. Latin American countries are not equipped to handle such volumes of criminals, causing higher corruption rates in Latin America and effectively making the crime problems greater. Forcing deportees back into countries that allow them the resources to gather reinforcements is the cause of a greater crisis on American society because these criminals will come back despite not having permission to do so. The United States is one of the richest nations in the world with countless opportunities, hence the appeal for a desperate immigrant to migrate to America. The “American Dream” is the attraction that most of humanity has to the United States, the promise of a better tomorrow. This is the motivating drive behind immigration in the first place. If people were happy in their homelands, they would never leave. Obviously there is some aspect of their society that is driving them out.

Samuel Posado-Rios organized a narcotics distribution ring that expanded from Columbia to the United States.<sup>xxii</sup> He had various employees under him that would oversee the operations in each region. Carlos Antonio Mena and Luis Gerardo Rios-Castano were two of his associates that were deported from the United States on lesser crime charges, which would later become head members of the “La Compania”.<sup>xxiii</sup> Despite their exile from the United States, these men still found their way back to commit more heinous and violent crimes. The intention behind deportation is to rid America of crime, but in reality bigger networks of crime are created in the process, because these violent criminals created different “homes”, different areas they were familiar with in terms of terrain and local authority. Given the poverty level in their homelands of these

men, it is much easier to buy off an official or to gain more a bigger work force to increase their illegal operations; there is little opportunity open to those people otherwise. Deportation returns these criminals to a society that can be bought without any sense of morality. The reality in these nations is harsh, and for many, possessing crime, power, and money are the only ways to survive. Deportation sends back dangerous people to convince others to do the same but in the United States.

### **It is our problem**

Deportation is ultimately destroying our sense of security on a greater scale. For many children of immigrants, deportation affects the very foundation of a person. Deportation affects everyone, citizens, residents, and immigrants. For those whose parents are deported they are left to fend for themselves, simply because their parents were not born in the United States. Those who are deported are not allowed back into the United States, their families are left without fathers, mothers, brothers, sisters, aunts, uncles, cousins, and grandparents. Deportation affects security on an international scale. Deportation does not stop hardened criminals from returning to the United States. These convicted felons return and usually commit crimes that are more violent but due to the deported status, their whereabouts are unknown, whilst bringing reinforcements. The realization that most people leave their native land for a better life is essential to understanding immigration. Many leave due to the impoverished and dangerous situations in which their nations are, which is why so many seek the United States. Countless amounts of deportees fear for their lives in their home lands, while others are unable recognize where they have been sent, there only home is America. With the case of Posada-Rivas, the effects of deportation are evident; deportation does not stop a



criminal but enables them to create crimes on a larger scale. Criminals should be incarcerated, not sent back to create bigger crime syndicates. American was built on the process of “Life, Liberty, and the Pursuit of Happiness”. Deportation takes away those promises. Deportation does not only affect the deportee, but it changes the lives of everyone surrounding them. Deportation abolishes a person’s fundamental survival need of safety in a land that was built on the principles of freedom and liberty for all.

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<sup>i</sup> FY 2013 ICE Immigration Removals: US Immigration and Customs Enforcement.

<sup>ii</sup> “MEMORANDUM OF AGREEMENT BETWEEN U.S. DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT And [STATE IDENTIFICATION BUREAU].” US Immigration and Customs Enforcement: pg 2.

<sup>iii</sup> Padilla v. Kentucky, 559 U.S. 356 (U.S. 2010)

Shear, Michael D. and Julia Preston, “Deportation Policy Shift Is Signaled by Obama,” The New York Times. March 14, 2014

<sup>iv</sup> Padilla v. Kentucky, 559 U.S. 356 (U.S. 2010)

<sup>v</sup> Padilla v. Kentucky, 559 U.S. 356 (U.S. 2010)

<sup>vi</sup> Padilla v. Kentucky, 559 U.S. 356 (U.S. 2010)

<sup>vii</sup> Pg. 52. Petitioner's brief to the US Supreme Court:

[http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/08-651\\_Petitioner.pdf](http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/08-651_Petitioner.pdf)

<sup>viii</sup> Rosenberg, Joanna.”A GAME CHANGER? THE IMPACT OF PADILLA V. KENTUCKY ON THE COLLATERAL CONSEQUENCES RULE AND INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS.” Fordham Law Review Vol 82. Pg 1410.

<sup>ix</sup> Kovacs v. United States, 744 F.3d 44 (2d Cir. N.Y. 2014)

<sup>x</sup> Kovacs v. United States, 744 F.3d 44 (2d Cir. N.Y. 2014)

<sup>xi</sup> Kovacs v. US, 744 F. 3d 44 - Court of Appeals, 2nd Circuit 2014

<sup>xii</sup> Kovacs v. US, 744 F. 3d 44 - Court of Appeals, 2nd Circuit 2014

<sup>xiii</sup> Kovacs v. US, 744 F. 3d 44 - Court of Appeals, 2nd Circuit 2014

<sup>xiv</sup> Kovacs v. US, 744 F. 3d 44 - Court of Appeals, 2nd Circuit 2014

<sup>xv</sup> US v. Pornes-Garcia, 171 F. 3d 142 - Court of Appeals, 2nd Circuit 1999

<sup>xvi</sup> US v. Pornes-Garcia, 171 F. 3d 142 - Court of Appeals, 2nd Circuit 1999

<sup>xvii</sup> US v. Pornes-Garcia, 171 F. 3d 142 - Court of Appeals, 2nd Circuit 1999

<sup>xviii</sup> US v. SALDIVAR-MUNOZ, Court of Appeals, 10th Circuit 2011

<sup>xix</sup> US v. SALDIVAR-MUNOZ, Court of Appeals, 10th Circuit 2011

<sup>xx</sup> US v. SALDIVAR-MUNOZ, Court of Appeals, 10th Circuit 2011

<sup>xxi</sup> US v. SALDIVAR-MUNOZ, Court of Appeals, 10th Circuit 2011

<sup>xxii</sup> US v. Posada-Rios, 158 F. 3d 832 - Court of Appeals, 5th Circuit 1998

<sup>xxiii</sup> US v. Posada-Rios, 158 F. 3d 832 - Court of Appeals, 5th Circuit 1998