"As to its cruelty, nothing can exceed a forcible deportation from a country of one's residence, and the breaking up of all the relations of friendship, family, and business there contracted."

*Fong Yue Ting*, 149 U.S. at 759 (Field, J. dissenting)

"Fear is the parent of cruelty."

James Anthony Froude
What is the nature of Deportation?

Four (*polemical*) assertions:

- The deportation system is best understood as an enforcement mechanism that implicates much more than sovereignty or immigration status;
- It is anomalous, larger than you think, and growing;
- It implicitly challenges powerful societal values and certain basic human rights;
- It is an embarrassingly poor substitute for comprehensive immigration policy.
"The bosom of America is open to receive not only the Opulent and respectable Stranger, but the oppressed and persecuted of all Nations and Religions; whom we shall welcome to a participation of all our rights and privileges if, by decency and propriety of conduct, they appear to merit the enjoyment."

The System: Who Faces Deportation?

Anyone who is not a U.S. citizen

(undocumented people, asylum-seekers, non-immigrants, and even “green-card” holders with long legal residence and families)
The Modern Deportations Delirium

In 1920, Louis Post wrote a powerfully critical book about the “Deportations Delirium” of 1920

But in 1920, deportations totaled = 14,557
Immigrant admissions = 430,000
For a ratio of = 3:100 (3%)

Since 1996, LPR admissions = 14,353,455
However, removals and returns = 20,739,310

This is a ratio of 144:100 (144%)
Bush/Obama Deportations

Total Removals/Returns Since 1961 (10 yr spans)

- **1961-1970**: 1,334,528 (Removals: 134,528, Returns: 1,200,000)
- **1981-1990**: 9,961,912 (Removals: 996,191, Returns: 8,965,721)
- **1991-2000**: 13,588,193 (Removals: 1,358,819, Returns: 12,229,374)
- **2001-2010**: 9,378,880 (Removals: 937,880, Returns: 8,440,996)
Bush/Obama Deportations

DEPORTATIONS BY FISCAL YEAR
Bush and Obama Administrations

Criminal Deportations
Non-Criminal Deportations

How Big is the Deportation System?

Since 1980, the number of times an individual non-citizen has been caught somewhere on U.S. soil, and determined to be subject to deportation has exceeded 35 million.

(DHS 2009 Statistical Yearbooks, Tables 33, 34, 38 [“deportable aliens located”])
The dramatic recent increase in post-entry social control deportations

From 2001-2010, over 1,021,000 people were deported from the United States because of post-entry criminal conduct, some serious, the majority drugs, immigration and traffic violations, and much as minor as possession of marijuana or shoplifting.

DHS 2010 Statistical Yearbook, Table 37d
How Does the System Work?

[Why?]

- Mandatory Detention;
- No right to counsel;
- Minimal, if any, Fourth Amendment rights;
- Retroactivity;
- Minimal, if any, selective prosecution rights;
- No jury trial;
- Newly restricted administrative and judicial review (1996 and 2005 laws);
- No post-removal motions to re-open
A 1996 law authorized DHS to enter into agreements with state and local law enforcement agencies, pursuant to a Memorandum of Agreement (MOA);

“Secure Communities”

Hundreds of state and county law enforcement officers provide “targeted immigration enforcement”

Number of arrests: tens of thousands.

DWL?
DHS now operates the largest detention and supervised release program in the U.S.;

DHS detains **over 350,000** people for at least 24 hours, in over 400 facilities, at a cost of >$1.2 billion;

The current number of “funded beds” for immigration detainees is >30,000;

About half the detainees have no criminal records at all;

Many give up fighting their cases and agree to removal.
Crime control?

The vast majority of [criminal] deportees were deported for a non-violent offense (77 percent of “legally present” noncitizens deported for crime were deported for non-violent offenses).
Deportation as crime control?

Researchers have highlighted a paradox of assimilation. The children and grandchildren of many immigrants—and many immigrants themselves—are subject to economic and social forces, such as higher rates of family disintegration and drug and alcohol addiction, that increase the likelihood of criminal behavior.

“If there was an ‘immigrant crime problem’ it was not found among the immigrants, but among their US-born sons.”

Whatever one may think of such a problem, it seems obvious that its solution is not deportation.

* = language proficiency, higher levels of education, job skills, and other attributes that improve their chances of success.
Who Faces Deportation?


Source Pew Report April 14, 2009

![Figure 2](image_url)

**Figure 2**

Nearly Half of Unauthorized-Immigrant Households Are Couples with Children

(% of households that are couples with children for each status group)

<table>
<thead>
<tr>
<th>Status Group</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. born</td>
<td>21%</td>
</tr>
<tr>
<td>Legal immigrants</td>
<td>35%</td>
</tr>
<tr>
<td>Unauthorized immigrants</td>
<td>47%</td>
</tr>
</tbody>
</table>

Note: Couples may be married or cohabiting

Source: Pew Hispanic Center tabulations from augmented March 2008 Current Population Survey. See Figure 10.
Challenges to Mixed Status Families

Over 100,000 parents of US citizen children were deported between 1997 and 2007

(DHS Office of Inspector General, 2009)
Effects of Deportation

Families:

“... tens of thousands of children of undocumented immigrants, including citizen children, have seen their families torn apart, or experienced the effective deportation of the entire family to countries as foreign to them as they are to other American children.”

Anomalous laws:

“U.S. citizen children are the victims of immigration laws that are out of step with the manner in which we address child welfare issues in other areas of the law. The “best interests” of the child find little or no hearing in the process of detaining and deporting undocumented parents.”
The “Ruby Slippers Project” aka Post-Deportation Human Rights

Basic Goals:

➢ To conceptualize a new area of law;
➢ To counsel, support, and represent individuals who have been deported from the United States;
➢ To investigate the effects of harsh deportation policies on families and communities;
➢ To facilitate community/university collaborations that will introduce legal predictability, proportionality, compassion, and respect for family unity into U.S. immigration law and policy;
➢ To reframe U.S. deportation policy to comply with [civil and international human] rights.

http://www.bc.edu/centers/humanrights/projects/deportation.html
Post-Deportation Legal Issues and Challenges

- Deportations of U.S. Citizens;
- Incorrect Deportations Without Recourse;
- Legal Malpractice/Ineffective Assistance;
- Extreme Hardship to Families;
- Statutory and Regulatory Reform.
Incorrect Deportations Without Recourse

Many tens of thousands of non-citizens have been deported pursuant to legal interpretations later found to have been incorrect by the U.S. Supreme Court. Others have been wrongly deprived of the opportunity to seek discretionary waivers. But there is no clear redress or return mechanism for them.

**See e.g., Lopez v. Gonzales, 549 U.S. 47 (2006), (an “aggravated felony” includes only conduct punishable as a felony under the federal Controlled Substances Act, regardless of whether state law classifies such conduct as a felony or a misdemeanor); Leocal v. Ashcroft, 543 U.S. 1 (2004), (aliens may not be deported for DUI if the statute that defines the offense does not contain a mens rea element or otherwise allows a conviction for merely negligent conduct.) Kanstroom, St. Cyr or Insincere: The Strange Quality of Supreme Court Victory, 16 GEORGETOWN IMMIGRATION LAW JOURNAL 413-464 (2002).**
Returning to the U.S. After Deportation

Significant challenges to returning permanently:

- Ineligible for a visa due to deportation
- Activity that led to deportation also likely makes individual ineligible for a new visa
- Obtaining special permission to return is possible in some cases – often requires showing “extreme hardship” to family member

Temporary visas
PDHRP Research: Effects on Children

- **Academic problems**

- **Depressive symptoms**

- **Anxiety symptoms**
  - insecurity about the future
  - concern for parents
  - fear
  - sleep disturbance
  - nightmares
  - separation anxiety

- **Developmental & behavioral challenges**
  - Withdrawal
  - Tantrums, acting out

"The first days were hopeless for her [daughter] and for me... When a person is nervous, they pass that on to their kids... The first days I was nervous, he [husband] was nervous. Mommy, why are you crying? Daddy, what's going on?"
A Final Thought…

“Only by zealously guarding the rights of the most humble, the most unorthodox and the most despised among us can freedom flourish and endure in our land.”