

A Nation of (Deported) Immigrants

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Sometime in 2012, Valente Valenzuela and his younger brother Manuel will find out whether they will be deported from the United States. Valente, sixty-two, and Manuel, fifty-eight, were born in Mexico, but moved to the United States in 1955, and have lived here since. Their mother was a U.S. citizen, and their father became a naturalized citizen. According to the Valenzuelas' attorney, the brothers, who are legal permanent residents, should have been granted citizenship upon moving to the United States as children, but were not. Each brother served in Vietnam: Valente is a decorated U.S. Army veteran, injured in combat and awarded a Bronze Star for his bravery; and Manuel is a former Marine. Both suffer from post-traumatic stress disorder, which they say contributed to their respective run-ins with the law—Valente was involved in a misdemeanor domestic violence dispute eleven years ago, and Manuel was charged with misdemeanor resisting arrest twenty-five years ago. Yet, despite having served their country and paid their dues, the brothers received letters from the Department of Homeland Security (Manuel in 2005 and Valente in 2009) notifying them that they will face deportation hearings. If deported, the Valenzuelas will lose their veterans' benefits, including counseling for their PTSD, and will be forced to leave the country they fought for and have called home for the last fifty-six years.

The Valenzuelas' cases are not unique. The Obama administration removed more people during each of the last two years than in any other year in U.S. history. Despite the administration's insistence that Immigration and Customs Enforcement (ICE) is focusing its efforts on dangerous, violent criminals, both anecdotal and statistical evidence prove

otherwise. In 2009, the number of removed individuals who had never been convicted of a crime was more than twice the number of those that had. In October 2010, ICE released its 2010 deportation statistics, celebrating the removal of a record 195,772 criminals. Although this represents a 52.5 percent increase from 2009, it should not overshadow the fact that non-criminals still made up more than half of the 392,862 removals. Moreover, some of the criminals removed were people like the Valenzuelas, who committed minor offenses years—or decades—ago.

How can the cases of Valente and Manuel Valenzuela and the hundreds of thousands of others like them be explained? An examination of the history of deportation and an analysis of recent immigration policies suggest some possible answers to this question and reveal that (1) an inadequate definition of deportation has obscured its magnitude, both past and present; (2) deportation has played an increasingly important, although underappreciated, role in U.S. immigration policy since 1950; and (3) a significant gap exists between the Obama administration's official enforcement policy and the implementation of policy at the local level.

Removal and Return

As Daniel Kanstroom, a lawyer and historian of immigration policy, has pointed out, the expulsion impulse has existed since the days of the Founding Fathers. However, it is only in the last sixty years that the detention and deportation regime has been fully established. In order to understand what has happened, we must first question the government's (and the media's) definition of deportation. The number of people deported each year is commonly equated with the number of people "removed." According to the 2009 Office of Immigration Statistics Yearbook, removals, or

formal deportations, are “the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal. An alien who is removed has administrative or criminal consequences placed on subsequent reentry...” Using this widely accepted definition, the number of deportations since 1892 (the year the federal government began keeping immigration statistics) exceeds five million. This drastically undercounts the number of individuals who have been required to leave the country.

A more accurate definition is the sum total of removals and returns, also known as informal deportations or voluntary departures—which are voluntary in name only. “Return” is “the confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal. Most of the voluntary returns are of Mexican nationals who have been apprehended by the U.S. Border Patrol...” This should not be confused with return migration, which usually is voluntary in nature. Official returns require individuals to depart the country by order of the federal immigration bureaucracy, although not by an order of removal issued by an immigration court.

Starting in the mid-1960s, the U.S. government, driven by budgetary constraints, embraced the policy of return. The expiration of the Bracero program, a twenty-two-year agreement that brought millions of Mexicans to the United States as temporary agricultural workers, and the cap placed on Western Hemisphere immigration under the 1965 Hart-Celler Act resulted in an increase in the number of Mexican immigrants considered to be illegal. The number of deportable immigrants apprehended far exceeded the number of spaces available in federal and local detention facilities. As Immigration and Naturalization Service commissioner Raymond F. Farrell wrote in the 1968 Annual Report, “in order to reduce costs, policy and procedural changes were made to utilize informal deportations [returns] in lieu of formal deportations [removals] in the rising number of Mexican cases.” The INS came to rely on returns out of necessity; to the Service, the means was less important than the ends.

For some immigrants facing deportation, return may seem the better of two unattractive options. First, it means that they won’t have to spend as much, if any, time in detention because there will be no deportation hearing. Second, there are fewer restrictions placed on reimmigrating and less severe consequences for those apprehended again. However, there are drawbacks as well: by accepting voluntary departure, immigrants give up the right to fight their deportation order in court, and they also have to pay for their own transportation. Additionally, it is important to remember that after the shift in policy, federal officials undoubtedly pressured immigrants into accepting returns.

Because both removals and returns require individuals to leave the United States, deportation should be defined as the sum of the two. Lending further support to this is the fact that the federal government classifies the one million-plus Mexicans deported during “Operation Wetback” in 1954 as returns, although their departure was hardly voluntary. When understood as the total number of removals and returns, the number of deportations since 1892 exceeds fifty-two million, representing a tenfold increase compared to the number of removals alone, and reflecting the fact that the deportation regime has overwhelmingly targeted Mexicans. Moreover, under this revised definition, more than 96 percent of all deportations since 1892 have taken place since 1950, and more than half have taken place since 1990. That is worth repeating: more than half of all deportations from the United States since 1892 have taken place during the last twenty years. These numbers reflect a fundamental shift in U.S. immigration policy and practice.

A New Harshness

As sociologist Jacqueline Hagan and her colleagues have described, in 1996 two congressional acts, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA), increased border security and essentially eliminated judicial review in most deportation cases. Instead of

review by an immigration judge, who could consider whether deportation would present a hardship for the deportee's family, the new laws gave low-level INS officials the ability to perform "expedited removals."

In addition to minimizing judicial review, IIRIRA expanded the definition of an "aggravated felony," the grounds for deportation, to include more than two dozen offenses, some of them minor. The expansion was retroactive, meaning that someone who may have committed a crime or pleaded guilty to a crime that was not a deportable offense at the time could now be sought out for removal. In October 2001, in the wake of the attacks of September 11, 2001, the Patriot Act gave federal immigration enforcement officials further leeway in detaining and deporting any immigrants *perceived* to be "engaged in any ... activity that endangers the national security of the United States."

These three acts and a ballooning INS/Homeland Security budget resulted in a significant increase in the number of admissions to detention facilities and in the average number of days spent in detention. They also produced a marked shift in how people are deported. After thirty years of relying primarily on returns, immigration officials have increasingly turned to removals. Between 1950 and 1995, the average number of yearly removals was just under 21,000. In 1996, the number of removals increased to 69,680; by 2003 it more than tripled, exceeding 211,000; and since 2007 the number of yearly removals has exceeded 300,000, reflecting the shift in law and the heightened emphasis in recent years on the criminalization and detention of immigrants.

Who is being targeted for detention and deportation? In response to a question about enforcement priorities, John Morton, Director of ICE, recently stated, "In a world of limited resources, our time is better spent on someone who is here unlawfully and is committing crimes in the neighborhood ... as opposed to someone who came to this country as a juvenile and spent the vast majority of their life here." Despite such assurances, recent trends—such as the defeat in the Senate of the DREAM Act, which would have provided a path to citizenship to undocumented immi-

grants who came to the United States before the age of sixteen, graduated from high school, lived in the country continuously for a minimum of five years prior to the bill's enactment, and completed at least two years of military service or higher education at a four-year institution; the proposal by Representative Steve King (R-IA) to deport tax-paying undocumented immigrants by forcing the IRS to share information with the Department of Homeland Security; and the expansion of the Secure Communities program, a partnership between the federal government and states and local communities that requires law enforcement officials to run the fingerprints of anyone arrested through a federal immigration database—indicate that ICE is likely to focus its efforts on removing immigrants at large, rather than dangerous criminals alone.

Since its inception in October 2008, more than eight hundred and fifty counties in thirty-four states, including every county in Arizona, Delaware, Florida, Texas, Virginia, and West Virginia, have signed up for Secure Communities. The Obama administration's plan is to implement the program in every county across the nation by 2013, with no option for local communities to opt out. Some counties and cities, including San Francisco and Washington, D.C., have objected to the implementation of Secure Communities, pointing to the detrimental effects the program would have—or is already having—on police-community relations. Indeed, the implementation of Secure Communities has a high cost: an increase in the deportation of noncriminals, the further marginalization of a population that is already among the least likely to report crimes (especially cases of domestic violence) or trust the police, and the enlistment of local law enforcement officials as poorly trained immigration officers, which detracts from their ability to focus on more pressing crime.

As of June 2010, 79 percent of people flagged by Secure Communities had no record or just a minor offense, which could be as small as a traffic violation. In Maricopa County, Arizona, home of the infamous Sheriff Joe Arpaio and ground zero of recent national

immigration debates, 54 percent of those flagged had no record at all. In Travis County, Texas, the percentage was even higher—82 percent had no criminal record. These discrepancies reveal the ability of local law enforcement officials—each with his or her own beliefs, understanding of immigration laws, and political constituencies—to take federal immigration policy into their own hands. This begins to explain the divergence between the Obama administration’s stated policy of deporting dangerous criminals and the actual implementation of that policy at the local level.

There are other possible explanations of why noncriminals are being deported. First is ICE’s need to justify its budget and place in the federal immigration bureaucracy by touting yearly “achievements” and trying to meet its 2010 goal (leaked in an internal memo) of four hundred thousand removals. Additional factors include political pressure to crack down on immigration given the recent recession and high levels of unemployment; the explosion of private prisons and “the business of deportation”; and, according to a December 2010 *Washington Post* article, the Obama administration’s (unsuccessful) attempt to gain bipartisan support for comprehensive immigration reform by increasing deportations and enforcement efforts.

Sadly, those most affected by the Obama administration’s escalation of deportations are not dangerous criminals but people like Valente and Manuel Valenzuela, who definitely do not pose a threat to their communities or to national security. Consider the case of nineteen-year-old construction worker and U.S. citizen Luis Alberto Delgado, wrongfully deported by U.S. Border Patrol agents in June 2010 after a routine traffic stop, despite the fact that he presented them with his state identification card, Social Security card, and a copy of his birth certificate from a Houston hospital. Delgado, who lived for most of his childhood in Mexico and is not a native English speaker, spent eighty-five days in exile until U.S. officials finally allowed him to re-enter the country in September, upon which he discovered that he had lost his

construction job.

Or consider the case of Mark Farrales, a thirty-one-year-old Harvard graduate and University of California-San Diego doctoral student. Farrales’s parents fled the Philippines after an assassination attempt on his father (a lawyer and politician who spoke out against government corruption) and brought him to the United States on a travel visa when he was ten. His father’s death in 2006 ended the family’s chance of gaining legal asylum and made Farrales deportable. In November 2010, ICE agents arrested Farrales at his home; he spent a month in detention before being released and granted a one-year reprieve from deportation, thanks in part to a *Los Angeles Times* article and the subsequent support of a local congressman. It is now up to the Board of Immigration Appeals to decide whether Farrales will be deported.

The Valenzuela brothers, Delgado, and Farrales are not anomalies. Rather, they make it clear that the Obama administration is not only deporting “dangerous” criminals but, like the administrations before it, continuing to target individuals who can best be described as productive, upstanding members of society, some of them legal permanent residents or citizens.

What Kind of Nation?

Although at first it might seem like a minor quibble, the way that deportation is defined significantly affects our understanding of immigration policy and practice because it calls into question the reputation of the United States as a nation that has welcomed immigrants throughout its history. The statistics reinforce this point: since 1950, 49,570,348 have been removed or returned, while 36,280,427 have obtained permanent resident status. The total number of deportations is striking, regardless of the fact that it includes some people who may have been deported multiple times. With thirteen million more people deported over the last sixty years than have been granted permanent residency, postwar America can more accurately be described as a nation that deports immigrants than as one that welcomes them.

A more inclusive definition not only

provides a more accurate record of total deportations, but also reveals that far from being a recent phenomenon, deportation has played an important role in U.S. immigration policy for sixty years. In turn, this realization calls for a critical reassessment of how immigration policy and the immigrant experience are understood in U.S. history and memory.

The outcomes of Valente and Manuel Valenzuela's cases are unclear. In his July 1, 2010, address on immigration reform, Obama noted that "immigrants have always helped to build and defend this country—and that being an American is not a matter of blood or birth. It's a matter of faith. It's a matter of fidelity to

the shared values that we all hold so dear. That's what makes us unique. That's what makes us strong. Anybody can help us write the next great chapter in our history." The expansion of Secure Communities and the continued deportation of people who pose no threat to local or national security indicate that the Valenzuelas and millions of others like them may not be around to do that.

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